SELECTIONS

FROM THE

RECORDS OF THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

No. CCC.

HOME DEPARTMENT SERIAL No. 12.

PAPERS

RELATING TO A

BILL TO PROVIDE FOR THE MORE EFFECTUAL SURVEILLANCE AND CONTROL OF HABITUAL OFFENDERS IN INDIA AND FOR CERTAIN CONNECTED PURPOSES.

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PAPERS

RELATING TO

THE BILL FOR THE MORE EFFECTUAL SURVEILLANCE AND CONTROL OF HABITUAL OFFENDERS IN INDIA AND FOR OTHER MATTERS.

PUNJAB.

From C. L. TUPPER, Esq., Secretary to the Government of the Punjab and its Dependencies, to the Officiating Secretary to the Government of India, Home Department,—No. 577S., dated the 30th September 1889.

In paragraph 10 of my letter No. 388S., dated 23rd August 1889, regarding the difficulties now experienced in bringing criminals to justice, the Lieutenant-Governor observed that, in his opinion, legislation is required in regard to serious cases of mischief, and in paragraph 24 it was added that a Bill would be submitted dealing with—

(1) the surveillance of habitual offenders;
(2) the improvement of the law of security; and
(3) the better repression of the offence of mischief by the assessment of compensation on localities where it occurs.

2. This Bill I am now directed to submit for the consideration of the Government of India. Its provisions, I am to observe, have been drafted mainly with the object of legalizing a system of surveillance over certain classes of habitual offenders, and of imposing a system of village responsibility in localities where certain kinds of mischief are commonly committed. At the same time the opportunity has been taken of modifying in its application to this Province the existing provisions of the Criminal Procedure Code, so as to avoid the necessity of committing to prison persons who have been required to furnish, but cannot give, security for their good behaviour by giving the Courts an alternative power of bringing such persons under the system of surveillance.

3. From the enclosed papers* the Government of India will see that the question of legalizing the surveillance of habitual offenders has been under consideration for some years, and that the provisions of the Bill have not been framed merely in view of the defects in the criminal administration of the Punjab which were pointed out in Mr. MacDonnell's letter No. 632, dated 22nd December 1888. At the beginning of 1886 the matter was considered by the Inspector-General of Police in communication with the same officers in other Provinces, and there was an almost unanimous expression of opinion that legislation in the direction now proposed was most desirable. Accordingly, at the end of the year 1887, the attention of Commissioners was drawn to the provisions of Statute 34 and 35 Vict., Cap. 112, Section 8, under which, when any person is convicted of felony or of certain misdemeanours, and a previous conviction for any felony or for any such misdemeanour is proved against the accused, the Court, in addition to any other punishment, may direct that he be subject to the supervision of the Police for any period not exceeding seven years, commencing immediately on the termination of the term of penal servitude or imprisonment. In India, it was pointed out no such power had been given to the criminal courts, possibly because the Legislature had considered that the provisions regarding demanding security from bad characters contained an efficient substitute. Nearly all the most experienc[illegible] Magistrates and Police Officers in the Province are agreed that the provisions of the Code of Criminal Procedure regarding security are inadequate, and that they should be supplemented by an enactment legal[illegible] of the surveillance of habitual offenders in certain cases.

* Beginning with memorandum No. 732, dated 17th March 1886, from Inspector General of Police, Punjab, and ending with letter No. 71, dated 12th January 1888, from District Superintendent of Police, Rawalpindi.

In this opi[illegible]xtends, the following s[illegible]overnor ful[illegible] concurs. The power to demand security
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headmen to control and overawe the bad characters diminishes: they are commonly afraid to give evidence and unwilling to become security unless they are themselves in league with the criminals. On the other hand, the development of railways, and the increased means of procuring employment at a distance from their homes, has rendered the loose characters more able and willing to leave their villages and take up their abodes elsewhere. The deterrent effect of being placed on security has therefore been seriously impaired. The offender is not bound thereby to remain in any particular locality, and neither by inclination nor by the difficulty of communications is he precluded from seeking new scenes wherein to indulge in his criminal propensities. The result is that old offenders on security resume their careers of crime in places distant from their homes,—perhaps in other Provinces,—where their antecedents are unknown, and where, even if they are convicted, a light sentence alone may be meted out to them. Again, security for good behaviour cannot be taken at a time of conviction; separate proceedings have to be instituted subsequently. District Magistrates in the Punjab have multifarious duties and are hard worked, and the result is that the power is only used intermittently.

5. The present Bill has been framed with the object of counteracting this state of things. It is essential, in Sir James Lyall's opinion, that the Police and Magistrates should have the means of knowing how certain classes of criminals are conducting themselves after their release from jail, and this end can only be attained effectively by the establishment of a system of surveillance which shall disclose their movements to the officers responsible for the administration of the criminal law. As regards the classes to whom this system should be applied, the Lieutenant-Governor considers that all persons who have been twice convicted under Chapter XII or XVII of the Indian Penal Code should be liable at the time of the second conviction to be placed under surveillance for a term not exceeding seven years to commence on their liberation from jail. The chapters above cited include offences relating to coin and the more serious crimes against property, and sufficiently embrace all cases for which it seems desirable to provide by legislation.

6. Turning now to the provisions of the Bill, I am to say that Section 2 has been framed with the intention of making the system of surveillance applicable to all persons who have rendered themselves liable to enhanced punishment under Section 75 of the Indian Penal Code, whether such persons have or have not been actually sentenced to such punishment. The object of this section is to apply the provisions of the Bill to persons who are twice convicted of certain offences, but who are tried by ordinary Magistrates and who therefore even for the second conviction do not receive a heavier sentence than two years' imprisonment, the maximum substantive term which a 1st Class Magistrate can inflict. If the definition of an "habitual offender" were limited to a person who receives enhanced punishment under Section 75 of the Indian Penal Code, the effect of the Bill would be narrowed to dealing with a comparatively few cases in which the Sessions Judge, or the District Magistrate, in exercise of powers conferred under Sections 30 and 34 of Act X of 1882, passes an enhanced sentence; and the ordinary habitual criminal would escape.

7. Section 4 has been drafted with the object of enabling a Court or Magistrate to save an offender who has been required to furnish security from going to prison if he is unable to give that security; also with the view of enabling the Magistrate to substitute surveillance for imprisonment if that appears the order best adapted to the requirements of the case, as it generally would be. The Lieutenant-Governor considers this a useful amendment of the law, the object of which should be not to imprison persons who have not been convicted of an actual offence, but to take such precautions as shall prevent them from preying on society.

8. The provisions of Section 5 aim at including within the operation of the Bill habitual offenders who may be in jail when the new law takes effect, or who have been released within three years before that time. If an effectual check is to be placed upon the movements of habitual offenders, it is necessary to take power to apply the system of surveillance to such offenders as may be at large when the new law is introduced. At the same time it will be observed that due formalities are required to be observed before an order for surveillance can be given in such cases, and that only the District Magistrate or a Sub-Divisional Magistrate especially empowered can pass the order.

9. Under Section 6 an offender ordered to undergo surveillance is permitted to apply to have security taken from him instead of being kept under surveillance, but the District or Sub-Divisional Magistrate may, for reasons to be recorded, refuse to grant such an application. The power to reject such applications is necessary for the reasons stated in paragraph 4 of this reference: otherwise the professional criminal would be enabled to give security, and leave the neighbourhood without any restraint on his movements. At the same time the section should prove valuable in giving an offender the opportunity of escaping surveillance, and it

be found that, whether through oppression on the part of the Police, or for any other reason, the system pressed unduly on him.

10. Sections 7, 8, 9, 10, and 11 of the Bill have been framed on the analogy of Sections 18 to 22 of the Criminal Tribes Act, XXVII of 1871. The provisions of that Act have not worked too severely either in the case of the criminal tribes who have been brought under its operation, or of the village members who are responsible that the rules under it are complied with, and the Lieutenant-Governor thinks that much the same provisions should be applied in the case of habitual offenders. The practical working of the system of surveillance must depend upon the nature of the rules to be framed by the Local Government with the sanction of the Government of India. Into these it is needless to enter at present, or until the principle of the proposed legislation has been accepted by the Supreme Government. It suffices to state that the rules should involve a minimum of Police interference consistent with a real supervision over the movements and mode of life of the persons subjected to surveillance.

11. The last section of the Bill deals with the subject of compensation to be assessed on localities in which certain kinds of mischief are committed, and the offenders cannot be traced. In paragraph 10 of my letter No. 388, dated 23rd August last, it was noticed that between the years 1883 and 1887 the number of cases of serious mischief had risen from 509 to 1,158. This matter engaged the attention of the Commissioner of the Rawalpindi Division so long ago as 1883, in which year he advocated the expediency of enacting that in the case of persistent want of detection of the crimes of cattle-poisoning and rick-burning, the village or Patwari circle where such undetected crimes had been committed should be ordered to pay the value of the property destroyed. A copy of Mr. Perkins's remarks on the subject is appended for the information of the Government of India. That some such provision is very necessary Sir James Lyall has no doubt. Offences of this nature are very rife in certain parts of the Punjab, while the detection of them is most difficult, not only because it is not easy to produce satisfactory evidence in court of a crime which can be committed by one person on a dark night, but also because, although the perpetrator is often known to the villagers, no one dares to come forward and give evidence lest a similar fate befall his own property. It is believed that provisions somewhat similar to those now proposed have within recent years been introduced in Ireland with much success, and the Lieutenant-Governor considers that equally good results may be attained in this Province. He therefore hopes that the Bill now submitted, the drafting of which has been revised by the Government Advocate, will be favourably considered by the Government of India as soon as practicable; for he feels sure that its provisions are much needed in the Punjab, and that the introduction of them should not be delayed.

DRAFT BILL

ACT OF 18 .

Whereas it is expedient to provide for the more effectual surveillance and control of habitual offenders and for other matters,

It is hereby enacted as follows :—

1 (1) This Act may be called the Habitual Offenders Surveillance Act, 1889.

(2) This section and section 9 extend to the whole of British India; the rest of this Act extends only to the territories, for the time being, under the administration of the Lieutenant-Governor of the Punjab: and

(3) This Act shall come into force on

2. For the purposes of this Act the term "Habitual Offender" shall apply to any person convicted on two or more occasions of offences under Chapter XII or XVII of the Indian Penal Code, whether the second offence was committed subsequently to the first conviction or not, and who has been sentenced or might have been sentenced to enhanced punishment under Section 75 of the same Code.

3. An habitual offender may, in addition to any sentence of transportation or imprisonment which may be passed upon him, be made subject, under the order of the Court or Magistrate convicting him, to undergo a term of surveillance not exceeding seven years from the date of his release from transportation or imprisonment.

4. To Section 123 of the Code of Criminal Procedure in its application to the territories to which this Act extends, the following shall be added :—"If any person ordered to give security for good behaviour under the provisions of this Chapter does not give such security on or before the date on which the period for which such security is to be given commences, the Court

or Magistrate may in place of ordering such person to be committed to, or detained in, prison direct that he shall be subject to surveillance within the meaning of the Habitual Offenders Surveillance Act, 1889, and the Rules thereunder, for a term which may extend to five years."

5. Any habitual offender in respect of whom a sentence of transportation or imprisonment is in force at the commencement of this Act, or who has been released from transportation or imprisonment within a period of three years from such commencement, may be required by the District Magistrate, or by a Sub-Divisional Magistrate specially empowered in this behalf by the Local Government, to undergo a term of surveillance which may extend to seven years from the date of his release from transportation or imprisonment if after examination of the record of the case in which such offender was convicted, or upon information received, such Magistrate considers that it is expedient for the prevention of crime that such offender should be placed under surveillance.

6. Any person in respect of whom an order requiring him to undergo a term of surveillance is passed may, at any time, while such order remains in force, apply to the District Magistrate or Sub-Divisional Magistrate to have security for his good behaviour taken from him in lieu of surveillance. Such Magistrate may reject the application if he thinks the continuance of surveillance necessary, but in such case he shall record his reasons. If the Magistrate is of opinion that security may be substituted for surveillance, he shall proceed in accordance with the provisions of Section 122 of the Code of Criminal Procedure to require such person to furnish security for his good behaviour, and, as far as may be, in making this order the provisions of Chapter VIII of the same Code shall apply, except that the bond requiring such person to be of good behaviour shall, unless cancelled in accordance with law, bind him until the expiration of the period for which the order of surveillance was given.

7. For the purposes of surveillance, the Local Government may, with the previous consent of the Governor General in Council, make rules prescribing—

Cf. Section 18 of Act XXVII of 1871.

(1) The form in which a register of habitual offenders, who are under surveillance, shall be maintained;

(2) The limits within which persons whose names are on such registers shall reside;

(3) The conditions as to holding passes under which such persons may be permitted to leave the said limits;

(4) The conditions to be inserted in any such pass as to—

(*a*) the places to or at which the holder of the pass may go or reside,

(*b*) the officers before whom he shall be bound to present himself from time to time, and

(*c*) the time during which he may absent himself;

(5) The conditions as to answering at roll-call, or otherwise, so that it may be ascertained that the persons whose names are on the register are actually present at given hours or times within the said limits;

(6) The inspection of the residences of such persons, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property or to leave their place of residence without leave;

(7) And generally to carry out the purposes of this Act in regard to surveillance.

8. Any habitual offender violating any of the rules made under Section 7 shall be punished with rigorous imprisonment, which may extend to one year, or with fine, or with whipping, or with all or any two of those punishments.

Cf. Section 19 of Act XXVII of 1871.

9. Any habitual offender registered under the provisions of this Act as subject to surveillance, who is found in any part of British India beyond the limits prescribed for his residence without such pass as may be required by the said rules or in a place, or at a time not permitted by the conditions of his pass, may be arrested without warrant by any Police Officer or village watchman, and taken before a Magistrate who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, there to be dealt with according to the rules under this Act for the time being in force.

Cf. Section 20 of Act XXVII of 1871.

The procedure for the time being prescribed by law for the removal of prisoners shall apply to all persons removed under this section, provided that an order from Governor General in Council, the Local Government, or the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Cf. Section 21 of Act XXVII of 1871.

10. It shall be the duty of every village headman and village watchman in a village in which any registered habitual offender under surveillance resides, and of every owner or occupier of land on which such a person resides, to give the earliest information in his power at the nearest Police Station—

(1) Of the breach of any of the rules under this Act by the said habitual offender.

(2) Of the departure without leave of any such person from such village or land as the case may be.

It shall be the duty of every village headman and village watchman in a village to give the earliest information in his power at the nearest Police Station of the arrival, at such village, of any person who may reasonably be suspected to be a registered habitual offender under surveillance.

And it shall be the duty of every village headman and village watchman, and of every owner or occupier of land, to give timely information to the officer in charge of the Police Station within which such village or land is situate of any registered habitual offender under surveillance, resident in such village or on such land, being absent at night without leave, or associating with individuals of bad repute, or ceasing to labour or to obtain a livelihood by honest means.

Cf. Section 22 of Act XXVII of 1871.

11. Any village headman, village watchman, owner or occupier of land who shall fail to comply with the requirements of Section 10 shall be deemed to have committed an offence, and shall, on conviction before a Magistrate, be punished with fine not exceeding R300, or with rigorous or simple imprisonment for a term not exceeding three months, or with both.

[This section, which is new, is directed against offences of the nature of those punishable under Sections 428, 429, 435, and 436, Indian Penal Code (including some like cases which fall under Section 426 or Section 427), poisoning cattle and incendiarism being offences which at times become frequent in parts of the country, and the commission of which can rarely be satisfactorily traced to particular persons, though (unless in cases where cattle poisoning is committed for the sake of gain) it is usually attributed with a good deal of probability to known enemies.

Under Section 44 of the Criminal Procedure Code, all persons are bound to give information of offences punishable under Sections 435 and 436, Indian Penal Code, but this does not apply to offences punishable under Sections 428 and 429.]

12. (1) When it appears to the Local Government that offences under Sections 427, 428, 429, 435, or 436 of the Indian Penal Code are commonly committed in any tract of country, and that the inhabitants of that tract or any of them keep back information which might lead to the detection of the offenders, or that any such inhabitants engage in conspiracies to commit mischief to property, the Local Government may, by notification published in the official Gazette and in such other manner as it shall direct, declare the provisions of this section to apply to that tract, defining its limits in the notification, and may, in like manner, cancel the notification, or alter the limits of the tract defined therein.

(2) When any offence mentioned in clause (1) of this section is committed in any tract to which this section applies, the Magistrate of the district may make an award, fixing the compensation payable for the injury caused by the offence, and if no trace of the offender has been discovered within three months from the date of the commission of the offence, such as may reasonably lead to his conviction, may determine the village or villages by the inhabitants of which the amount awarded should be paid, and assess the proportion in which it is to be paid by each inhabitant according to his judgment of their respective means.

(3) The award of compensation and the order determining the village or villages by which it should be paid shall be subject to confirmation by the Commissioner of the Division, and when it has been confirmed, the amount assessed upon each person shall be recoverable under the warrant of the Magistrate by distress and sale of any moveable property belonging to such person within the local limits of the jurisdiction of the Magistrate, or without such limits when the warrant has been endorsed by the Magistrate of the district within which the property is found.

Memorandum from COLONEL O. MENZIES, Inspector-General of Police, Punjab, to the Inspectors General of Police, Bombay, Madras, Lower Provinces, North-Western Provinces, Central Provinces, and Hyderabad Assigned Districts,—No. 732, dated 17th March 1886.

I have the honour to forward, for your perusal, a copy of a letter which I have recently addressed to the Secretary of the Committee for the revision of the Frontier Regulations in this Province, suggesting that an habitual offender, on conviction, should be sentenced to a term of surveillance to commence on the expiration of the period of imprisonment awarded as a punishment for his offence.

2. The subject is one which concerns not only the Punjab, but the whole of India, and I shall feel much obliged if you will kindly favour me with your views regarding it, in order, if possible, that combined action may be taken in representing to the Supreme Government the necessity for placing some check on the movements of persons who by their previous convictions have proved themselves to be habitual offenders.

From COLONEL O. MENZIES, Inspector General of Police, Punjab, to the Secretary to the Committee for revising Frontier Regulations,—No. 450, dated 15th February 1886.

By direction of His Honour the Lieutenant-Governor, I have the honour to attach, for the consideration of the Committee about to assemble at Peshawar, an extract from the Minutes of the Police Conference recently held in Lahore.

2. The inability of the Police to cope with habitual offenders is becoming more marked every year, and I consider it is absolutely necessary to enable the Police to maintain any surveillance over such characters that the authority of the law should be stamped on their actions.

3. Nowadays, with numbers of Pleaders all over the country, the criminal population are able to ascertain exactly the legal powers possessed by the Police. Only a short time ago the District Superintendent of Police, Delhi, received a lawyer's letter threatening prosecution for the action of the subordinate Police in waking up at night a well-known bad character, and, so far as I can see, there is no reason why, under the present state of the law, such a prosecution should not be quite valid.

4. In England an habitual offender, on conviction, is invariably sentenced to a term of Police surveillance, to take effect on the expiration of the period of imprisonment which is awarded as his punishment. Such released convicts have to report themselves to the local Police to comply with the rules laid down regarding them, and are liable to penalties for breaches of the same. If this procedure has been found necessary in England, where the liberty of the subject is most jealously guarded, I can see no reason why it should not be introduced in this country.

5. The idea has, however, already been acted on by the Indian Legislature, and Act XXVII of 1871 is in force; but that Act applies to criminal tribes and gangs only, and not to individual criminals. If it is necessary to restrict the movements of persons who by the misfortune of their birth are members of a criminal tribe, but who have themselves never been convicted of an offence, how much more important is it to impose some check on the liberty of persons who by their previous convictions have shown themselves to be habitual criminals and to be enemies of society at large.

6. I am of opinion that if the Criminal Tribes Act could be made applicable to persons who, in the opinion of the Magistrates by whom they are convicted, are habitual offenders, a real power would be given to the Police, and a serious obstacle placed in the path of the professional criminals. Were such a law in force there would be no difficulty in dealing with notorious criminals of the Peshawar District found wandering about other districts.

7. The power to hold roll-calls of such persons might be delegated to village headmen, who would then be responsible for their absence from their homes. In frontier districts it is especially necessary that the responsibility of Maliks and Khans, who draw allowances and *inams* for supposed service, should be enforced, and I think their agency might be made useful in the manner I have indicated.

Extract, paragraph 26, from Notes of the Committee of the Inspector General and three Deputy Inspectors-General and Personal Assistant, held at Lahore from 26th to 30th January 1886.

Book No. 10.—Alteration in use of Surveillance Register.

Para. 26. *Book No. 10.*—It is not considered advisable to adopt any proposal to change existing orders at present, but the Committee are strongly of opinion that the Inspector General should move the Government to take legal steps to admit of habitual offenders on conviction for certain offences being in the order of the committing Magistrate made subject for certain periods to Police surveillance after release from jail as is now done in England; that such surveillance should be such as is now legalized against criminal classes, and that thereby recognition of offenders could be more successfully maintained, and probably the necessity for enforcing the law as now contained in Section 110, etc., Criminal Procedure Code, might be rendered unnecessary. They consider

that it would be advantageous if Inspector General were to address the Inspectors General of the North-Western Provinces and Bengal on this subject, and thus obtain concerted action.

From LIEUTENANT-COLONEL H. A. HAMMOND, Officiating Inspector General of Police and Prisons, Central Provinces, to the Inspector General of Police, Punjab,—No. 2133, dated Nagpur, the 24th March 1886.

In acknowledging receipt of your letter No. 732, dated 17th current, I have the honour to state that I most cordially concur in your views pointing out the necessity of having legal authority to place habitual criminals under Police surveillance after release from jail.

2. I am of opinion that not only the local criminal should thus be watched, but that special powers should be granted to the Police to deal with those wandering criminals who, as mendicants, doctors, etc., travel through the length and breadth of India without any check being placed on their movements.

From LIEUTENANT-COLONEL F. J. WISE, Inspector General of Police, Bombay, to the Inspector General of Police Punjab,—No. 1277, dated Poona, the 26th March 1886.

In reply to your No. 732 of the 17th instant, I have the honour to inform you that I fully concur in what you have written regarding the urgent necessity of some law being passed by which habitual criminals can be kept under Police surveillance. This necessity becomes more apparent every year, and now that railways offer facilities for travelling about the country which did not exist some years back, these habitual criminals spread themselves all over India, moving from district to district as they become too well known to the Police and certain localities are made too hot for them. Many Punjabis now visit this Presidency to commit crime who were unknown here in former years, and no doubt most of them are habitual offenders and well known to the Police in their own country. Until similar laws to those in force in England are passed regarding habitual criminals in India, these curses to society will have it much their own way, railway communication having made matters easy for them, and rendered it impossible for the Police to keep any efficient surveillance or touch of them.

From the Officiating Inspector General of Police, Lower Provinces, to the Inspector General of Police, Punjab,—No. 3346, dated Fort William, the 30th March 1886.

In reply to your No. 732 of 17th March, I have the honour to say that the surveillance of released convicts, though not provided for or recognised by the Legislature, is already attended to in the Lower Provinces, and is by no means confined to the case of habitual offenders.

2. I feel certain that the proposed extension of the Criminal Tribes Act is practically impossible as being altogether opposed to the present tendency of legislation in this country, and I am inclined to doubt the policy of calling attention to the subject, or of giving the Police greater powers in this direction than they possess at present. The lower grades are so little to be trusted, that an order to a released convict to report himself periodically would merely be turned into a means of levying black-mail, and, even if it were not so, I should still prefe having him visited at his home, as it would otherwise be impossible to know where he had come from.

3. The legal profession in this part of India are perhaps not less numerous or troublesome than they are elsewhere, but no such incident as that you mention as having occurred at Delhi has yet cropped up here, and my experience is that their threats are not seldom a *brutum fulmen* based on a real or pretended belief in the ignorance or timidity of the officials they are hired to attack. If a superior Court were finally to decide that a domiciliary visit amounted to a trespass, or, in other words, that surveillance was illegal, legislation would undoubtedly be necessary, but at present, I think, it has not been shown to be, and I would not resort to it till we are compelled to. Our position as regards the criminal classes is one which it is well not to examine too closely, and any statutory powers we might be invested with as the result of legislation would be certain to be hampered with provisos, and to be regarded with no friendly eye by a judiciary always jealous of the power of the executive.

From LIEUTENANT-COLONEL C. T. LANE, Inspector General of Police, Hyderabad Assigned Districts, to the Inspector General of Police, Punjab,—No. 729, dated Amraoti, the 3rd April 1886.

I have the honour to acknowledge the receipt of your No. 732, dated 17th March 1886.

2. I scarcely think that, as regardsthe desirability in the abstract of a measure which would allow of a legalised surveillance over habitual criminals after expiry of their sentences, there can be much difference of opinion among officers acquainted with recent developments of

crime in India, and I think that a vague fear that such a measure placed in the hands of the Police might be abused has been the principal obstacle to its enforcement.

3. The fear might be well founded if the surveillance were to consist of a power of constant interference with the criminal by subordinate Police officers; but the measure which would, I believe, be approved by experienced Police officers and Magistrates would be one which would lay on the offender himself, so to speak, the burden of maintaining his own surveillance by the authorities by making it obligatory on him under penalty of a return to jail to report his movements to those authorities. The Police would have no power of direct interference, but would have to prove breach of conditions of release to the satisfaction of a Magistrate before the penalty could be enforced.

4. I have for some time held the opinion strongly that this is one of the three things most required to assist the Police in repressing crime, the others being an Act making it obligatory on sonars, etc., to keep a register of all ornaments purchased or melted down by them, and restriction on the sale of poisons, especially arsenic.

5. I think it well to point out that the want of any *legalised* method of surveillance over habitual criminals drives the Police to unauthorized methods which, when challenged, cannot be upheld.

6. I cannot perhaps better support the case for the advisability of passing a measure which would provide for the exercise of a legalised surveillance over habitual bad characters than by reference to a case referred to in my report for 1884, *viz.*, that of three habitual dhatura poisoners. Enquiry has shown that the men I referred to have been in the habit for years of disappearing from their villages at intervals and returning to them with money, evidently gained by committing robbery by poison. As matters stand at present, when these men are released they can, without any difficulty, resume their calling; no one has a right to challenge them, nor need they tell any one where they intend to go, or on their return where they have been. If these men had to report their movements they could not exercise their criminal calling. With the facilities which now exist for travelling it is simply impossible for the Police to keep a watch over the movements of criminals of this kind.

7. If a measure similar to that in force in England could be obtained for India, under which habituals in addition to a sentence of imprisonment could be sentenced to a further term of surveillance, I believe that an important step would have been gained towards the more effectual repression of professional crime.

From R. T. HOBART, Esq., C.S., Offg. Inspector General of Police, North-Western Provinces and Oudh, to the Inspector General of Police, Punjab,—No. 5235, dated Lucknow, the 12th April 1886.

In reply to your letter No. 732, dated 17th March 1886, on the subject of Police surveillance over habitual offenders, I have the honour to state that it would appear to be desirable to have the warranty of law for the rules which are at present in force in these Provinces, and which entirely cover the ground traversed by the Inspector General in his Minute. Those rules are to be found at pages 177, 178, and 179 of the Police Manual of these Provinces.

2. At the same time I do not go so far as to recommend the extension of the Criminal Tribes Act to the case of habituals. The cases are entirely different, and, indeed, I have reason to think from my jail experience that habituals are harassed by continual Police visits, and that it would be better for all if they were not so much looked after. In these Provinces, at all events, the Police are frequently most injudicious, and the habitual never gets a chance.

From COLONEL T. K. GUTHRIE, Inspector-General of Police, Madras, to the Inspector-General of Police, Punjab,—No. 1913, dated Madras, the 13th April 1886.

Adverting to your letter No. 732 of 17th March, and its enclosure, I have the honour to say that I entirely concur in your views. The right of the Police to visit habitual criminals, or as we call them "Known Depredators," at night has been called in question by more than one Magistrate, and there can be no doubt that as the law at present stands our men are without authority, and their action in knocking up known depredators at night could not be defended if seriously attacked.

2. It is an old custom of the country, the tradition of which alone enables us to carry it out without cavil, but the sooner it has the authority of the law the better.

From W. M. YOUNG, Esq., Secretary to Government of the Punjab, to the Inspector General of Police, Punjab, —No 437S., dated Simla, the 17th September 1886.

With reference to your letter No. 450, dated 15th February last, relating to the surveillance of habitual offenders after release from jail, I am desired by the Lieutenant-Governor to forward herewith copy of paragraph 53 of the Report of the Committee recently assembled at Peshawar to consolidate and amend the Frontier Criminal Regulations, and to request that, in accordance with the Committee's recommendation, you will prepare a draft of the detailed provisions which you would propose to add to the general law for effecting the object in view.

Extract, paragraph 53, from the Committee's Report of the Frontier Regulations, 1886.

(4) The proposed power to sentence habitual offenders to a term of Police surveillance.

Para. 35. As requested by Government, the Committee has considered the letter of the Inspector General of Police, No. 450, dated the 15th February 1886,* in which it is proposed that power should be taken to sentence habitual offenders on conviction to a term of Police surveillance which would take effect on the expiration of any period of imprisonment adjudged against them. The idea is that the surveillance would be enforced by a system of registers, obligatory residence in particular localities, roll-calls, and passes, similar to that maintained under Act XXVII of 1871 in the case of criminal tribes.

* *Vide* Appendix H.

The Committee fully concurs in the principle of this proposal, and believes that a discretion to Magistrates and Criminal Courts generally to pass a sentence of this description on habitual criminals when convicted would be attended with beneficial results to the country at large. Such a discretion would be useful in the Peshawar Division as elsewhere, and could be employed to supplement the provisions of the draft Regulation and to further the operation of the general law in dealing with Pathan criminals in other parts of India. But an examination of the Criminal Tribes Act, Sections 1 to 22 inclusive, will show that the existing provisions of the law would require to be recast to make them applicable to the case of individual offenders. The rules under the Act would also need considerable modification before they could be regarded as suitable for the control of habitual offenders not belonging to a proclaimed criminal tribe. Moreover, for the purpose of repressing typical crime in the Peshawar Division, the Committee believes that the proposals made in the draft Regulation will suffice. It is, therefore, suggested that the question raised by the Inspector General of Police should be taken up separately. The Inspector General might be invited to prepare a draft of the detailed provisions which he would propose to add to the general law; and recommendations might then be made to the Supreme Government for the incorporation of such provisions as might be approved in the revised Code of Criminal Procedure.

From COLONEL O. MENZIES, Inspector General of Police, Punjab, to the Secretary to the Government of the Punjab,—No. 94, dated Lahore, the 1st October 1886.

In reply to your letter No. 437S., dated 17th September 1886, on the subject of the surveillance of habitual offenders after release from jail, etc., in which you request me to submit a draft of the detailed provisions I would propose to add to the general law for effecting the object in view, I have the honour to submit herewith the rough draft of an Act which, in my opinion, would meet the requirements of the case in the most complete form.

2. Seeing that whatever amendments to the existing laws I might propose to make it would be necessary for the legislature to pass an Act embodying such, I am of opinion that it would be better to have a separate Act for the purpose rather than to amend, or to add to, present laws, and for this reason I have ventured to draft the accompanying Act, taking Act XXVII of 1871 as my guide, and incorporating therein certain rules under Act IV of 1872 regarding the duties of village headmen, village watchmen, etc.

3. If this Act, when improved and rendered more technically correct by those better qualified than I am to draft such matters, should be approved of and become law, I would advocate the adoption, with some few additions and modifications, of the rules Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 made under Section 18 of Act XXVII of 1871 as the rules to be applied to habitual offenders under Section 5 of the present draft.

4. For the object and reasons for this Act I need only refer you to the correspondence and unofficial notes.

ACT OF 188 .

Whereas it is expedient to provide for the more effectual surveillance and control of habitual offenders,

It is therefore enacted as follows:—

I. This Act may be called the "Habitual Offenders Surveillance Act," and extends to the whole of British India.

II. For the purposes of this Act the term "Habitual Offenders" shall apply to any persons convicted of offences under Chapters XII and XVII, Indian Penal Code, and sentenced to enhanced punishment under Section 75, Indian Penal Code, or who, under the provisions of Section 110, Criminal Procedure Code, might be called upon to furnish security for good behaviour for the term of three years.

III. An habitual offender may, in addition to the sentence of transportation or imprisonment passed upon him under Section 75, Indian Penal Code, be made subject, under the order of the Court convicting him, to undergo a term of surveillance not exceeding seven years from the date of his release from jail.

IV. An habitual offender, from whom security for good behaviour might, under the provisions of Section 110, Criminal Procedure Code, be demanded for the period of three years, may, at the discretion of the Magistrate, in lieu of such security being demanded, be made subject to surveillance for a period not exceeding five years.

V. For the purposes of such surveillance, the Local Government may, with the previous consent of the Governor General in Council, make rules to prescribe—

(1) the form in which a register of such persons, termed habitual offenders, and made subject to surveillance, shall be maintained;

(2) the limits within which persons, whose names are in such registers, shall reside;

(3) the conditions as to holding passes under which such persons may be permitted to leave the said limits;

(4) conditions to be inserted in any such pass as to—

  (a) the places where the holders of the pass may go or reside;

  (b) the officers before whom, from time to time, he shall be bound to present himself,

  (c) and the time during which he may absent himself;

(5) conditions as to answering at roll-call or otherwise, in order to ascertain that the persons whose names are on the register are actually present at given hours or times within the said limits;

(6) the inspection of the residences of such persons, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property or to leave their place of residence without leave;

(7) and generally to carry out the purposes of this Act.

VI. Any habitual offender violating any of the rules made under Section V shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and on any second conviction for a breach of any of the said rules with rigorous imprisonment, which may extend to one year, or with fine, or with whipping or with all or any two of those punishments.

VII. Any habitual offender registered under the provisions of this Act as subject to surveillance, who is found in any part of British India beyond the limits so prescribed for his residence without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass, may be arrested without warrant, by any Police Officer or village watchman, and taken before a Magistrate who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section, provided that an order from the Local Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons.

VIII. It shall be the duty of every village headman and village watchman in a village in which any registered habitual offender under surveillance resides, and of every owner or occupier

of land on which such persons reside, to give the earliest information in his power at the nearest Police Station of the—

(1) breach of any of the rules under this Act by the said habitual offender;

(2) departure without leave of any such person from such village or land, as the case may be.

And it shall be the duty of every village headman and village watchman in a village, and of every owner or occupier of land to give the earliest information in his power at the nearest Police Station of the arrival of any person who may reasonably be suspected to be a registered habitual offender under surveillance at such village or such land.

And it shall be the duty of every village headman and village watchman, and every owner or occupier of land, to give timely information to the officer in charge of the Police Station within which such village or land is situate of any registered habitual offender under surveillance, resident in such village or on such land, being absent at night without leave, or associating with individuals of bad repute, or ceasing to labour or to obtain a livelihood by honest means.

IX. Any village headman, village watchman, owner or occupier of land who shall fail to comply with the requirements of Section VIII shall be deemed to have committed an offence under the first part of Section 176, Indian Penal Code, and shall, on conviction before a Magistrate, be punished with fine not exceeding R300, or with imprisonment, with or without hard labour, for a term not exceeding three months, or with both.

Extract, paragraph 18, from Police Report for 1886.

Cause of increase of crime.

Para. 18. Having indicated the part of the Province in which the increase of crime is most observable, it will be well to refer to the opinions expressed by the local officers regarding the causes which have produced it. Mr. Turton Smith, Colonel Millett, and Mr. Warburton, the District Superintendents of Police of Lahore, Montgomery, and Amritsar, respectively, who are all experienced officers, have expressed views which are very much in accordance with those of the Deputy Commissioner of Lahore, contained in his Criminal Report for the past year, from which I give the following extracts:—

"19. The chief cause to which I ascribe the increase of crime is the comparative impunity with which it can be committed. (The breaking up of the old form of social life, the diminished powers of the 'Baradari' and elders, and the almost vanished power of the lambardars to control and punish socially the members of their community, is another phase of the impunity which criminals enjoy.)

"The impunity is due to a great extent to our system of law, because—

"(a) cases must be fully proved by legal and unimpeachable evidence. The tendency to mix up false with true evidence in true cases is fatal to many cases both in original and appellate courts;

"(b) witnesses for the prosecution are often unwilling to give evidence, sometimes through fear of reprisals, sometimes through friendship or through accused compounding the offence;

"(c) criminals can generally produce any number of witnesses to prove their cases;

"(d) criminals engage pleaders to defend them. Government has no prosecutor.

"There is a tendency at present to direct the attention of officers to the perfection of the revenue records and away from the protection of the person and property of the people, which is really their first and most important duty. This has not been taken in hand by superior authority in the same way as other duties have been taken in hand by the Chief Court and Financial Commissioner.

"The duties of Tahsildars are arranged almost exclusively with reference to the prefection of the revenue records. The most efficient native officer in this district is deputed for this work, and is given little criminal work in consequence. In fact the tendency is to put the magisterial functions of all officers below their revenue functions.

"Even the close control which the Chief Court exercises over all Criminal Courts appears to be directed more to the correctness and legality of the work of the Courts, and adequacy of sentences passed, than to the repression of crime generally.

"Indeed, if I am not mistaken, the Chief Court holds the repression of crime, except as regards cases actually brought into Court, to belong to the Executive branches and not to the Chief Court.

"20. I have reported the above facts showing the increase of crime, and stated what I hold to be the cause of the increase, and perhaps I may offer here, for what they are worth, such remedies as have suggested themselves to me.

"They are—

"(1) The application to habitual criminals of restrictive surveillance similar to that provided in the Criminal Tribes Act. I went more fully into this in last year's report, and need not now repeat what I then said.

"(2) The appointment of local Honorary Magistrates. This I also suggested in last year's report, and in the year two Honorary Magistrates were appointed—Sardar Natha Singh at Lidhar; he unfortunately died shortly after his appointment. I believe if he had lived he would have reduced crime in his neighbourhood.

* * * * * * * *

"(3) The permanent appointment of another European Magistrate of the first class to the district. I think the cases tried by European Magistrates are better tried, and the punishments given are more calculated to check crime, and that generally they do more to check crime.

"(4) That all officers should be encouraged and required to feel that their magisterial functions are more important than their revenue functions.

"(5) That a Government Prosecutor should be engaged for the district.

"(6) That the Magistrates in the district be given local jurisdiction and be held responsible to the Magistrate of the district for the crime in their jurisdiction. This was done in July last.

"(7) Further taking of security from bad characters. The object being rather to take security from the influential supporters of bad characters than from a great number. The security being for large amounts for long periods, and care being taken in the approval of the securities. Arrangements are being made for doing this in the thana where crime has most increased, but the difficulty of obtaining the requisite evidence is great. This leads to the next proposed remedy.

"(8) I have noticed above the terrorism exercised by bad characters over respectable men, their power to cause them damage by firing their stacks and other such crimes. In this way respectable men are prevented from assisting the Police and giving evidence. This class of offence is committed almost with impunity as convictions are so rare. An Act is required to enable the Magistrate of the district, where a mischief is proved to have been malicious, to award full compensation and levy it on the village or a large area as may suit the circumstances of the case. This would at once remove the motive for firing the stacks and remove the terrorism of bad characters."

With regard to the above extracts from the Criminal Report of the Lahore District, I may at once state that I fully endorse all that Mr. W. O. Clark has written, and can but regret that the proposals which I submitted to Government in October last, regarding the necessity for legalising surveillance over habitual offenders, supported as they were by the opinions of the Inspectors General of Police, Madras, Bombay, Central Provinces, Berar, and, to some degree, of the Inspector General of Police, North-Western Provinces, did not meet with approval. I am nevertheless convinced that, until some such measures are adopted to strengthen our hands, we cannot hope to grapple with the steady increase in professional crime.

The opinion expressed in the last paragraph of the extract above given is almost word for word what Mr. F. D. Cunningham has remarked on the Police Report of the Hazara District, and will be found in the review of that district.

As an instance of what can be done by an energetic District Magistrate who considers his magisterial functions of foremost importance, I would invite a perusal of the review of the Kohat District, from which it will be seen that, through the measures adopted by Mr. Udny, a considerable decrease has been effected in normal crime. It is true that Kohat is perhaps not so overrun by pleaders as most districts are, and that the machinery in use there is not at present applicable to Cis-Indus districts, yet I feel sure that the satisfactory results which have been achieved in that district are chiefly due to the personal interest which has been taken by the District Magistrate in the repression of crime.

As I am aware that Mr. Elsmie, Financial Commissioner, late Commissioner of Lahore, was, during his recent cold weather tour in the Lahore Division, much struck with the very marked increase in crime as elicited by him from his inspections of Police stations, and had, with a view of submitting a report on the same to Government, called for comparative statements from the District Magistrates, I would suggest, for the consideration of Government, that his opinion as to the causes for the increase in crime and the necessary remedial measures be invited.

Extract, paragraph 41, from the Police Report for 1886.

GENERAL REMARKS.

Conclusion.

Para. 41. In conclusion, I would respectfully invite the serious attention of Government not only to the very marked increase in crime which this report exhibits, but also to the causes for it, which have been pointed out by several experienced officers. Foremost among the remedies which have been suggested is the proposal to legalize surveillance over habitual offenders, and I wish to express my opinion most emphatically that, until this measure is adopted, the police will be unable to successfully grapple with professional crime.

Proceedings of the Honourable the Lieutenant-Governor of the Punjab in the Home (Police) Department,—No. 181, dated 8th September 1887.

Read—

The Annual Report on the Administration of the Police for the year 1886, received in print on 15th July, 1887.

* * * * * * *

2. But any inaccuracies which may be due to the above causes must relate mainly to charges of minor offences. Nor is there any reason to suppose that the figures for the year under report have been specially raised by such inaccuracies. The Inspector General of Police admits that the statistics prove a real increase in serious crime in the year under report, particularly under the heads of murder, hurt, burglary, and theft. The number of murders has risen from 433 in 1885 to 453 in 1886, and attempts to murder have increased from 81 to 109; while the number of serious cases of house-trespass investigated by the Police *suo motu* was 13,744 in the year under review against 12,327 in 1885. From the statement given in paragraph 16 of the Report it appears that out of a total increase of 2,517 cases of burglary under Class III, no less than 1,052 were contributed by the contiguous districts of Amritsar, Lahore, and Ferozepore. In the Review of the Report on the Administration of Criminal Justice the Lieutenant-Governor has already indicated generally what he believes to be some of the causes of the increase in crime. Several of these causes are mentioned in the Report now under review, and it is unnecessary to repeat what has been already remarked on them. Colonel Menzies, in paragraphs 18 and 41 of his report, urges an amendment of the law regarding the surveillance of habitual offenders. This subject was fully considered by Sir Charles Aitchison, who was of opinion that the existing provisions of the law were sufficient. But with reference to the Inspector General's remarks, Mr. Lyall is willing to receive a further representation on the subject. Apart from such special remedies, the obvious mode of improving the Police is to strengthen it, and there appear no doubt to be grounds for thinking that the sanctioned Police establishment of the Province is insufficient to perform effectually the work required of it. Population and reported crime have steadily increased, but the scale of the Police establishment remains almost exactly as sanctioned when the Department was organized on the passing of Act V of 1861. The number of Police Officers competent to conduct investigations is often therefore for a time insufficient to work out satisfactorily all cases into which enquiry has to be made. This difficulty has been more especially remarked in the Peshawar District, but it appears to obtain also in other parts of the Province. Under existing financial circumstances any useful addition to the Provincial Police Force is impracticable; but if, as it appears probable from the statistics of the Amritsar, Lahore, and Ferozepore Districts, an increase in serious crime can be definitely traced to certain localities, it is a matter for consideration whether under the provisions of Section 15 of the Police Act it may not be possible to strengthen the number of Police employed in the offending localities, and to charge the cost of the increased establishment to their inhabitants. The law permits the employment of a Police Force in excess of the ordinary fixed complement in any part of the General Police District in which from the conduct of the inhabitants it may be deemed expedient to increase the number of Police. The Lieutenant-Governor will be glad if the Inspector General will consider the practicability of adopting this suggestion, and any proposals which may be made will receive attention when the reports asked for in paragraph 2 of the Criminal Justice Review are submitted by the Commissioners.

From G HUGHES, Esq., Offg. Under-Secretary to the Government of the Punjab, to all Commissioners and Superintendents of Divisions in the Punjab,—No. 1251, dated Lahore, the 14th December 1887.

In paragraph 2 of the Review on the Police Report for 1886 the Honourable the Lieutenant-Governor stated that, with reference to the remarks made in paragraphs 18 and 41 of the Report, His Honour was willing to receive a further representation on the question of amending the law so as to provide for the surveillance of habitual offenders.

2. With the exception of the special provisions of Act XXVII of 1871 (The Criminal Tribes Act) the Indian Statute-book at present contains no law whereby the surveillance of habitual offenders by the Police is legalized. In England the system is well known. Under the provisions of 34 and 35 Vict., Cap. 112, Section 8, when any person is convicted of felony or any of the undermentioned misdemeanors, *viz.*—

(1) uttering false or counterfeit coin;
(2) possessing counterfeit gold or silver coin;
(3) obtaining goods or money by false pretences;
(4) conspiracy to defraud;
(5) being found by night armed, with intent to break into a dwelling-house;
(6) being found by night, without lawful excuse, with house-breaking implements;
(7) being found by night with face blackened, etc., with intent to commit felony;
(8) being found by night in any dwelling-house or building with intent to commit felony;

and a previous conviction for any felony or for any such misdemeanor is proved against him, the Court, in addition to any other punishment, may direct that he be subject to the supervision of the Police for any period not exceeding seven years, commencing immediately on the termination of the term of penal servitude or imprisonment. A person under sentence of Police supervision is under precisely the same conditions as a convict on license (except that he has no license to produce), that is to say, he must report his entry into and removal from a Police District to the chief officer of Police in such district or to such other officer as he may appoint, and he must report himself once a month personally at such time as may be prescribed by the chief officer, and any change of address must be similarly reported. The penalty for infringing any of the conditions is one year's imprisonment with hard labour.

3. In India no such general procedure has been adopted, possibly because the power to demand security from bad characters was considered an efficient substitute. Under Section 505 of Act X of 1872 security could be taken from any person who, from evidence as to general character, appeared to be by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the same to have been stolen, or a person of notoriously bad livelihood or a dangerous character.

4. In 1882 the law was changed, and security can now be taken only from persons proved to be *habitual* robbers, house-breakers or thieves, or habitual receivers of stolen property, or who habitually commit extortion or, in order to the committing of extortion, habitually put or attempt to put persons in fear of injury.* There is one important difference between demanding security to keep the peace and demanding it for good behaviour. The former can be demanded under Section 106, Criminal Procedure Code, at the time of conviction for rioting, assaults, or other breaches of the peace, etc., but security for good behaviour can only be taken by separate proceedings, and cannot be demanded at the time that a person is convicted of theft, robbery, etc. Probably the present state of the law has thus tended to diminish the number of persons from whom security is demanded; for the number of regular civil and criminal cases is on the increase, and Magistrates have less time to spare for miscellaneous criminal cases of this nature.

* Section 110 of Act X of 1882.

5. On all hands it seems to be accepted that habitual offenders require more stringent treatment than can be dealt to them at present. This has been pointed out in the district criminal reports and in other correspondence, and, in paragraph 2 of the Review of the Report on Criminal Justice for 1886, the Lieutenant-Governor called for suggestions from the Commissioners of the Cis-Indus Divisions for meeting the increase in offences against property which has now been clearly shown to have taken place in many districts of the Province. With reference to this requisition, I am now to request that you will favour the Lieutenant-Governor with your opinion and that of any Deputy Commissioners whom you may wish to consult as to the advisability of amending the law so as to allow security to be taken from persons at the time of conviction, either for the first or second time, of certain offences, notably those under Chapter XVII, Indian Penal Code, or to legalize a definite system of Police surveillance after release in such cases.

From Colonel O. Menzies, Inspector General of Police, Punjab, to the Secretary to the Government of the Punjab,—No. 123, dated Lahore, the 20th December 1887.

In reply to your letter No. 1251, dated 14th December 1887, asking for my opinion as to the advisability of amending the law so as to allow security to be taken from persons at the time of conviction in certain cases, or to legalize a definite system of police surveillance after release in such cases, I have the honour to state that I have already, in my unofficial No. 94 dated 1st October 1886, given my opinion as to the necessity for some system of surveillance over habituals being legalized, and have submitted a draft Act showing how I would propose such to be carried out.

2. While, therefore, I see no objection to the amendment of the law to allow of security being taken from persons at the time of their conviction, I do not consider that such will be a sufficient remedy in the case of habituals, as it is impossible to prevent a person who has given security for good behaviour from wandering all over the country and under various *aliases* committing offences where he is not known, in which case the sureties can seldom be come down upon.

3. Moreover, an "habitual" has no difficulty in obtaining security, and whenever he has given it he rightly holds that the Police have no authority to watch his movements or to interfere with them, or even to publish his absence from his home in their Gazettes, as he *may* possibly be on some really honest business.

4. What we want is some control over the "habitual" to prevent his leaving his home without a pass while under sentence of surveillance, and to be empowered to publish a description of him when absent without leave, so that he may be arrested wherever he may be, and punished, and at the same time to enforce upon the headmen and lambardars a certain amount of responsibility for maintaining a surveillance over such characters which cannot be efficiently exercised by the few police located in a police station jurisdiction.

5. We want the respectable and influential members of village communities to assist in this matter, and I have therefore in my proposal termed the restraint to be put upon habituals "Surveillance" and not "Police Surveillance."

6. Security for good behaviour is a very powerful check upon those villagers who have a large stake in land, and who are not likely to wander about India to perpetrate crime, but who do, either by abetting lesser criminals or by actual participation in crimes within a certain range, render themselves liable to legal punishment; but with "habituals" the case is different; they are generally professional burglars, coiners or cattle-lifters, and to demand security from them merely means that they get men to become surety for them by either depositing the amount with them or by giving bonds for payment should the sureties from their misconduct be mulcted.

7. It acts doubtless as a deterrent in the case of purely local crime and local offenders, but does not act as a restraint upon habituals who seek for plunder at a distance from their residences, and who nowadays are able to absent themselves whenever they like without any one calling them to account. Under my proposed Act a restraint would be imposed upon this class, as the lambardars and headmen would be responsible to report their absence, and the Police would have authority to enquire as to the presence or absence of such individuals when patrolling.

8. I trust, therefore, that the amendment of the law may take the shape of a surveillance over habituals being legalized rather than of security for good behaviour being demanded at the time of conviction; for while it is an object to be arrived at that the criminal should be given a fair opportunity to earn an honest livelihood after release from jail, being only restrained to the extent of having to ask for leave to go where he could find such, and of being watched for a certain time, it is not desirable that he should be kept on in jail for an extra period in default of such security being forthcoming and yet at the end to this period be released altogether free from all restraint and surveillance, however noted an offender he might be.

From COLONEL E. L. OMMANNEY Commissioner and Superintendent, Derajat Division, to the Under-Secretary to the Government of the Punjab,—No. 284, dated Camp Muzaffargarh, 17th—19th March 1888.

Deputy Commissioner, Muzaffargarh's No. 20, dated 16th January 1888.
Deputy Commissioner, Dera Ismail Khan's No. 38, dated 21st January 1888.
Deputy Commissioner, Dera Ghazi Khan's No. 83, dated 9th February 1888.
Deputy Commissioner, Bannu's No. 123, dated 5th March 1888.

With reference to your No. 1251, dated 14th December 1887, $\frac{\text{Home}}{\text{Judicial}}$, relative to the question of the amendment of the law so as to allow security for good behaviour to be taken from persons at the time of conviction of certain offences or to legalize a definite system of Police surveillance after release in such cases, I have the honour to forward copies of the correspondence marginally noted and to offer the following remarks.

2. After a second conviction of offences under Chapters XII, XVI, XVII, there would appear to be just and reasonable grounds for calling on the convict to furnish security for good behaviour prior to his release at the expiry of his sentence, or in default of giving such security to direct that he be placed under the surveillance of the Police for a specified period; to insist on the furnishing of security when the convict may be unable to give it would mean constant imprisonment, and this would be opposed to justice and good policy, for the worst criminal may sometime or other reform and no law should render such repentance impossible.

3. The Police should be empowered to report cases of persons to be placed under surveillance other than those convicted by Magistrates, and the procedure for placing other than convicted offenders on security for good behaviour should be simplified. In both cases the Magistrate of the District should have the power to release persons from the restrictions placed on them.

4. In framing laws and rules no doubt it will be borne in mind that the continual placing of men on security and under surveillance of the Police by preventing their reform would render them hopeless and tend to make them dangerous members of society.

From H. W. STEEL, Esq., Deputy Commissioner, Muzaffargarh, to the Commissioner and Superintendent, Derajat Division,—No. 20, dated 16th January 1888.

With reference to your Circular No. 2, calling for remarks and opinion on points noted in paragraph 5, Government Punjab Circular of 14th December last.

I may state that I am averse to taking security from persons at time of conviction of certain offences, as I do not think this would be likely to lead to any definite results, in this district at least. I am, however, strongly in favour of a definite system of police supervision after the release of such prisoners, and would suggest that all persons after more than one conviction under 3, 5, 6, 7, 8 heads of section 2 of the above Circular should be treated in a similar manner as is now in effect regarding the members of named criminal tribes. Whether the present police force would be able to cope with this considerable addition to their present duties is a question for consideration.

From G. M. OGILVIE, Esq., Deputy Commissioner, Dera Ismail Khan, to the Commissioner and Superintendent, Derajat Division,—No. 38, dated the 21st January 1888.

I have the honour to submit the report called for in your Circular No. 2, dated 7th instant.

2. Assuming that the necessity for surveillance over habitual offenders is admitted, the question is as to the best system for maintaining it. Whatever scheme may be adopted, certain essential principles should be kept in view.

3. In the first place the system should be under the immediate control of the Magistrate of the district. There should be no separate departmental police system of surveillance; but all action of the police in this matter should be taken strictly and solely under the orders of the District Magistrate.

4. *Secondly.*—The scheme should only affect persons who have been convicted of certain offences against property, and who are also pronounced under the authority of the District Magistrate to be habitual criminals.

5. *Thirdly.*—All orders passed should have the sanction of the District Magistrate, and should be executive orders and appealable only to higher executive authority, namely, to Commissioners and Government. No person should have the right to be heard by pleader against any such orders, nor should any appeal be permitted to the higher judicial courts.

6. Keeping in view these essential principles, the system might be on the following plan. All Magistrates to have the power when passing sentence to recommend that the convicted person be placed under surveillance on completion of his sentence. Such cases to be sent up periodically with a covering list by the police for the orders of the District Magistrate. The District Superintendent also to have the power of applying that any convicted person be placed under surveillance, although the convicting Magistrate may not have recorded any order to that effect. The Magistrate of the district to have power to order, either on reference through the police as above, or whenever he considers proper, that any convicted person, whether in jail or at large, be placed under surveillance for a period to be fixed by rule made by the Local Government. The District Magistrate also to have the power to order that the surveillance of any person be ceased at any time; all such orders to be final, unless Government should allow an appeal in certain cases to Commissioners.

7. The next question is what the nature of the surveillance should be; and this is the most difficult part of the subject. It is not a good plan to harass too much men who are under surveillance, for this tends to prevent them gaining an honest livelihood. It would not be right to force men to be constantly making long journeys from their villages to the police stations to report themselves as present. With some modifications, the provisions of the Criminal Tribes Act might perhaps be found applicable. For information regarding the movements and habits of persons under surveillance, it would no doubt be necessary in rural districts to depend chiefly on the village officers, namely, the lambardar and chaukidar. But in order to make this supervision of habitual criminals really effective it would be necessary to legalize a scheme of joint village responsibility for watch and ward, and also for the detection of local offences, as I have recommended in reports connected with the Police Department (see my No. 21, dated 12th January 1888). The present rules defining the responsibility of lambardars and chaukidars (Rules under Section 39 A of the Punjab Laws Act, Sections 17, 18, 19, 21, 24 and 25) fail in their object because lambardars have not got any legal power or authority, and there is no means of forcing the other landholders in the village to support and assist the lambardar.

8. Of course it is only my intention to sketch out a system, and much attention would have to be given to many points in detail before such a system could be made law. But I think that legislation, if carried out, should be mainly on the lines which I have indicated.

From M. L. DAMES, Esq., Deputy Commissioner, Dera Ghazi Khan, to the Commissioner and Superintendent, Derajat Division,—No. 83, dated the 6th—9th February 1888.

In reply to your Circular No. 2, dated 7th January 1888, enclosing for opinion a copy of Circular No 1251, dated 14th December 1887, from Under-Secretary to Government, Punjab, I have the honour to state that in my opinion some amendment is required in the rules relating to the supervision of bad characters.

This may take two forms, *viz.*,—

(*a*) an amendment of the law contained in Act X of 1882 regarding the taking of security from habitual offenders; and

(*b*) the introduction of a system of surveillance of convicted offenders on their release similar to that adopted in England.

(*a*) The defects of the present law regarding security are in my opinion as follows:—

(1) The procedure is too cumbrous, and owing to its elaboration very limited number of cases can be dealt with. In most cases the evidence against several bad characters is that of the same men, *viz.*, the leading residents of the neighbourhood. Yet each man has to be proceeded against separately, and the same witnesses have to be examined again and again; the clerical labor of the Magistrate being greatly increased by unnecessary repetitions. There is no good reason why proceedings against residents in the same locality should not be joint. Another point is the amount of proof required under Act X of 1882 to prove that the accused is a habitual thief, etc. The terms of Section 505 of Act X of 1872 were wider, and the evidence as to repute was easily attainable compared to what is now required.

(2) Another point to which I would draw attention is the short period during which the security continues under the present law. No Magistrate, not even the Magistrate of the district, can take security for more than a year on his own authority. Security up to three years requires the sanction of the Sessions Judge, and beyond that period it cannot be taken at all. The consequence is that well-known habitual criminals have either to be brought up every year and tried afresh with full judicial forms, or, as frequently happens, they are left for a long time without being put under security as they should be. Once a man is proved to be a habitual criminal, why should it require to be proved afresh every year? I would recommend that all Magistrates of the first class should be empowered to demand security for two years, and District Magistrates for seven years, subject to the same rules as to appeal and revision as at present.

(*b*) With regard to the proposals in paragraph 5 of the Circular, I consider that they would be very useful as a supplement to the provisions for taking security. I would put all convicted offenders who have been sentenced to terms of six months' imprisonment or upwards under Chapters XII and XVII of the Indian Penal Code under police surveillance *ipso facto*, without the necessity of any magisterial order, and in addition to this I would empower the convicting Magistrate to take security at the time of conviction, should he think it necessary. The surveillance would ensure milder system of control than the security, and would no doubt be sufficient in many cases, but not in all. Surveillance should, I think, last for four years without any order; but the Magistrate might be empowered to extend it to seven or even ten years in bad cases. Some provision of this sort would be effective as regards convicted offenders, but it is well known that many of the worst and cleverest criminals have never been convicted, and these can only be touched by the security sections of the Criminal Procedure Code. To deal with this class successfully, I consider that an amendment of the law in the manner suggested under (*a*) is undoubtedly required.

In frontier districts it might perhaps be practicable to allow security for good conduct to be taken by the Deputy Commissioner under the Frontier Regulation in the same way as security to keep the peace can now be taken under Section 39 of the Regulation.

From LIEUTENANT-COLONEL E. R. CONOLLY, Deputy Commissioner, Bannu, to the Commissioner and Superintendent, Derajat Division,—No. 123, dated the 5th March 1888.

I have the honour to reply as follows to your Circular No. 2, dated 7th January 1888, enclosing Punjab Government's Circular No. 1251 of 14th December 1887, regarding the introduction of surveillance over habitual offenders.

2. I would recommend that surveillance be enforced for any term not exceeding seven years on any person convicted of any offence under Chapters XVI and XVII of the Indian Penal Code (offences against the human body and offences against property) on the recommendation of any Magistrate or the District Superintendent, Police, and subject to the confirmation of the Magistrate of the district. An appeal against the decision of the last-mentioned officer for any term of surveillance exceeding two years to lie to the Commissioner and not to the Sessions Judge.

3. The surveillance to be carried out as follows:—

(1) A man under police surveillance should be required to report himself periodically to the police station—once a fortnight if he resides within five miles of the station, and once a month if he resides beyond five miles.

(2) The police to be empowered to call up all men under surveillance whenever the police visit on duty any village in which such men reside.

(3) No man under surveillance to be allowed to leave the limits of his police station without the permission of the lambardar of his village. The lambardar to report the giving of all such permission to the Deputy Inspector of the thana. Any man under surveillance going on leave in this way to state the purpose for which he is going, and to leave his address or sufficient information to enable him to be traced with either the lambardar or the Deputy Inspector. If the information is left with the lambardar, it should be at once forwarded to the Deputy Inspector.

4. The penalty for infringing any of the above conditions to be one year's rigorous imprisonment.

From C. M. RIVAZ, Esq., Officiating Commissioner and Superintendent, Lahore Division, to the Officiating Secretary to Government, Punjab,—No. 136, dated the 10th April 1888.

With reference to your Circular No. 1251 of the 14th December last, in which the question is discussed of amending the law in the direction of (1) allowing security for good behaviour to be taken from criminals in certain cases at the time of their conviction, and (2) legalizing a definite system of police surveillance after release in such cases, I have the honour to submit the opinions of the Deputy Commissioners in this Division whom I have consulted on this subject, namely,—

Lieutenant-Colonel Lang, Deputy Commissioner, Amritsar.
Major Hutchinson, Deputy Commissioner, Mooltan.
Mr. Brown, Deputy Commissioner, Gurdaspur.
Mr. W. O. Clark, Deputy Commissioner, Lahore.

It will be seen that these four officers, who are all experienced District Magistrates, are in favour of the measures under consideration; and, for my own part, I am quite of opinion that they are both of them highly desirable measures, and that their introduction would probably have a very salutary effect on checking the increase of offences against property which has of late been the special feature of the crime of most districts of the Province.

The taking of security for good behaviour is undoubtedly a useful measure if exercised with due discrimination and in respect of the proper persons, and recourse to such provision of the law would be greatly facilitated if security could be taken from convicted persons, in certain specified cases, in addition to the sentence of imprisonment and on its expiry, instead of its being necessary, as now, to take separate proceedings in each security case under Section 110 of the Code of Criminal Procedure. A system of police surveillance would also, I think, be very useful as an alternative check, in certain cases, on habitual thieves and receivers of stolen property. The special utility of such a measure would be that all the movements of a person under surveillance would be known to the Police. At present there is practically no supervision in this respect.

If an habitual offender, even one under security, changes his quarters from his usual place of residence and transfers them to another district, his movements are not watched, and consequently his antecedents are often unknown at his new place of residence.

3. As regards giving practical effect to the measures proposed, I would suggest that it might be enacted that—

I.—Any person convicted of an offence against property under Chapter XVII of the Penal Code, under circumstances which would render him liable to enhanced punishment under Section 75 of the Penal Code, shall be subject, at the discretion of the convicting officer, to either furnish security for good behaviour, on the expiration of the sentence of imprisonment, for a period not exceeding five years, or to be placed under police surveillance for a similar period.

II.—When a sufficient case exists, independent of any special conviction for taking security for good behaviour from any person under Section 110 of the Code of Criminal Procedure, such person may, as an alternative measure, be placed under police surveillance for a term not exceeding three years.

4. As regards the restrictions to be placed on persons made subject to police surveillance, similar rules might be made regarding their place of residence, their requiring leave of absence, etc., as have been framed under the Criminal Tribes Act for registered members of proclaimed tribes, and similar penalties might be provided for breaches of such rules as are prescribed in Section 19 of Act XXVII of 1871.

From MAJOR J. B. HUTCHINSON, Deputy Commissioner, Mooltan, to the Offg. Commissioner and Superintendent, Lahore Division,—No. 844, dated the 31st December 1887.

With reference to your Circular No. 296, dated 24th December 1887, forwarding copy of Under-Secretary to Government, Punjab's No. 1251, dated 14th idem, I have the honour to report that I am of opinion that some measures are imperative to enable District Magistrates to cope with the crime which has so rapidly increased and is still increasing. The returns of this district for the year 1887 show a large increase in crime even on the year 1886. I do not think that a return to the old law for taking security would be sufficient. Last year under the new law I personally demanded security from a very large number of men known to be professional thieves and receivers, but my action had no apparent effect, and I do not believe that even under the old law much success could be obtained. Neither the old nor the new law enabled us to get at the men who are really responsible for the crime, *viz.*, the men of position, such as Zaildars and Lambardars, who encourage thieves to reside in their villages. It would be impossible to remove such men from their posts, for there would be no one to take their place.

Under the new Land Revenue Act Rules a Zaildar or Lambardar may be suspended for a year, for sufficient cause, without a substitute being appointed.
C. M. RIVAZ.

2. The proposed change would be very well as regards men who have been convicted, and would, I consider, be most useful. I strongly recommend its introduction so as to be able to order men twice convicted under Chapter XVII, Indian Penal Code, to be placed under police surveillance for a period; but that alone would not be sufficient. It would not reach the Zaildars and Lambardars who have never been convicted, and who are too powerful in their circles for us to get evidence against them and obtain convictions which would render them liable to the surveillance. I believe the best method would be to make all Zaildars and Lambardars *ex-officio* police officers, thus rendering it obligatory on them to report all crime, to receive reports from complainants, and to take action.

Lambardars are already bound, under Section 45, Criminal Procedure Code, to report all non-bailable offences.
C. M. RIVAZ.

3. I think too that all village chaukidars should be brought under Act V of 1861; that they should be paid through the police and their pay recovered by a cess on the villages, which would be no more than is done now. At present they are in fact the private servants of the Lambardars. The cess might take the form of a house tax, which is in reality what now exists.

This is a separate question.
C. M. RIVAZ.

From J. C. BROWN, Esq., Deputy Commissioner, Gurdaspur, to the Commissioner and Superintendent, Lahore Division,—No. 33, dated January 1888.

I have the honour to reply to your Circular No. 296, dated 24th December 1887.

2. I have found in my experience that it is difficult in the existing state of the law to exercise preventive control over men who are hardly habitual thieves or receivers and are not members of any criminal tribe, but are men of exceedingly doubtful character, and according to public opinion, dangerous to society. For such men I think a system of police surveillance would be good.

3. I would recommend some such plan as the following for dealing with them. Sections akin to 109 and 110, Criminal Procedure Code, might be enacted allowing of initiatory action being taken as in the case of habituals *mutatis mutandis*. And a section might be added empowering the Magistrate who convicted a person under Chapter XVII, Indian Penal Code, for the second or subsequent time, or who took security from a habitual, to direct that on expiration of the period of imprisonment or of security the accused should be under police surveillance for a further period not exceeding the original period of imprisonment or of security.

4. Police surveillance should include the following:—

(*a*) Power of the Deputy Inspector in charge to call up the person at any time, with penalty of six months' imprisonment for failure to appear within 15 days of the issue of the order.

Provided that leave of absence from home for not more than one month may be given by the Deputy Inspector in writing, and for any period up to three months by a superior police officer.

(*b*) Power of the Zaildar to call up the person at any time within his (accused's) own village, and to require from him an account of his doings since the Zaildar's previous visit.

(*c*) Power of any 1st class Magistrate having jurisdiction to direct on application by the police and sufficient cause shown that during the remainder of the period of surveillance the person should report himself at the thana once a month and account for his doings during the past month.

(*d*) Provided that all action authorised to be taken by the Police may be taken by the District Magistrate of his own motion, and shall be at all times subject to his general control.

5. I did not above mention other offences than those under Chapter XVII, Indian Penal Code, as warranting police surveillance after conviction. But I would in the general preventive sections of the Criminal Procedure Code include habitual reputed criminal acts under Sections 362—373, Indian Penal Code, inclusive. Convictions under these sections are, I believe, rare in comparison with the crimes of this nature committed: and I think there is no doubt a class of criminals does exist who trade on prostitution and abduction. I would put them also under police surveillance both before and after actual conviction. Offences against coinage are included in the list warranting police surveillance under English law. I hardly think it necessary to include them in the proposed list of offences under the Indian Penal Code.

6. I beg to add that a similar reply has been sent to the Registrar, Chief Court, in reply to a reference made by that officer direct.

From W. O. CLARK, Esq., Deputy Commissioner, Lahore, to the Offg. Commissioner and Superintendent, Lahore Division,—No. 56, dated the Lahore, the 2nd February 1888.

I have the honour to reply to your No. 296, dated 24th December 1887, asking for an opinion "as to the advisability of amending the law so as to allow security to be taken from persons at the time of conviction, either for the first or second time, of certain offences, not only those under Chapter XVII, Indian Penal Code, or to legalize a definite system of police surveillance after release in such cases."

2. I am in favour both of allowing the court to take security for good behaviour at the time of conviction from persons convicted of offences against property, and also of allowing the court to order such persons to be subject to police surveillance for a suitable period.

3. The courts should also have power to order police surveillance against persons who have been required to furnish security for their good behaviour.

It is most important to be able to subject these persons, who are clever enough to escape detection, to this surveillance.

This power would often save a man who cannot give security from going to prison. If the man was under surveillance, he could, in most such cases, be let out on his own recognizance.

4. In this district the power to demand security for good behaviour has been very freely used within the last 12 months, and with some success in checking offences against property.

Broadly speaking, the effect of freely using this power is to give the lambardars and zaildars magisterial powers in a safe and effective way. They will know who the offenders in their neighbourhood are, though they are unable to bring proofs against them, and when the Magistrate comes round to take security they hand up the offenders. It also enables them to check petty crimes, which no one will take the trouble to attend long distances to prosecute. A short time ago thefts of crops were prevalent in this district; so also were temporary thefts of cattle committed in order to obtain a small sum for the return of the cattle.

The more extensive working of the security sections of the Criminal Procedure Code has enabled the local notables to check this kind of offences, as the offenders know that, though they may get off for the time, when the Magistrate comes round they will be handed up.

The arguments against the extended use of the security sections are many and patent; but after watching the effect of their extended use, I think their extended use is for the good of the people. I therefore regret the change that was made in the law in 1882, and would gladly see a change in the law that would give the courts further power in this direction.

5. The extent to which crime is committed by criminals far from their houses renders police surveillance specially desirable. It will also tend to prevent criminals settling in places where they are not known, and escaping, when they are convicted, enhanced punishment on account of their previous convictions.

6. A man under police surveillance will, I suppose, be required to comply with restrictions somewhat as follows:—

(1) To reside in a certain village.

(2) Get leave from the Ala Lambardar if he wishes to be absent for one night; from the Deputy Inspector if he wishes to be absent up to fourteen days; from the District Superintendent of Police or District Magistrate if he wishes to be absent longer than fourteen days.

(3) Report himself once a month to the Inspector of Police.

(4) Obtain permission if he wishes to change his place of residence.

7. There is of course the danger that the surveillance will in some cases interfere with the man's gaining his livelihood. For instance, it will tell very hard on men belonging to the pastoral tribes of the Bar, and men who are dependent on service ('mazduri') for their livelihood.

Lambardars will be very unwilling to allow men under surveillance to reside in their villages, as they will be held penally responsible for their being absent without leave. However, I think these difficulties must be faced. There is the safeguard against starvation that the men will have the option of going to prison. No doubt the Magistrate will so work the law as not to fill the prisons with such men.

8. As regards the period for which surveillance should be ordered, I would suggest that the period of surveillance might be up to double the term of imprisonment, and that in bad livelihood cases the period of surveillance might be the same as the period for which security may be required.

From Lieutenant-Colonel R. T. M. Lang, Deputy Commissioner, Amritsar, to the Commissioner and Superintendent, Lahore Division,—No. 118, dated the 2nd April 1888.

In reply to your Circular No. 296, dated 24th December 1887, calling for opinion on the subject of the proposed amendment of the law so as to provide for the surveillance of habitual offenders, I beg to state that in my opinion some kind of measure as that now suggested would prove beneficial, as both tending to strengthen the hands of the police, and also as acting as a deterrent on habitual offenders. I would suggest that Magistrates should be allowed to take security from persons convicted of first offences, as well as on second convictions, on condition that the prosecution gives the Magistrate good reasons for presuming the offender is of a more than ordinarily dangerous character or an "habitual;" for as often as not the habitual offender, though generally suspected, manages to get through most of his life without detection, and it is this very class of criminal who, when convicted and shown to be a 'habitual' or specially dangerous character, requires to be called on to furnish security. As a fact, persons of this class very seldom "turn over a new leaf" after release from prison, and even if they do so wish to lead an honest life, the fact of their being under security need not deter them from

doing so. I would make this provision of law applicable to all offences punishable under Chapter XVII, Criminal Procedure Code.

2. With regard to police surveillance, I think that the surveillance of the nature described in your letter would have a salutary effect both as giving the police fuller information as to the movements of the bad characters within the station limits, and also as imposing a certain feeling of restraint upon the bad characters themselves. I would make second convictions of any offence under Chapter XVII, Criminal Procedure Code, applicable to this measure also.

3. As to how far the police force now entertained in the Punjab would be sufficiently strong to be able to properly enforce this system of surveillance I presume is a question for the Police Department to determine.

From R. L. HARRIS, Esq., Registrar, Chief Court, Punjab, to the Under-Secretary to Government, Punjab,—No. 1991, dated Lahore, the 3rd May 1888.

I am directed to reply to your No. 1251, dated 14th December 1887, regarding the advisability of amending the law so as to allow of security being taken from persons at the time of conviction, or so as to legalize a system of police surveillance after release of convicts.

2. The Judges, after consulting the views of the Judicial Officers of the Province, are of opinion that a system of police surveillance would certainly have good effects. The question whether such system is workable, and the details which would have to be settled before putting such procedure in motion, are, the Judges think, to be decided by the executive. The Judges merely propose that the system be restricted to offences under Chapter XVII of the Indian Penal Code, to which Section 75 of that Code is applicable, *i.e.*, in cases where the offence is punishable with a term of imprisonment for three years or upwards, and in which a substantive sentence of three years' imprisonment or more is inflicted, whether on a first or further conviction.

3. This procedure would, in the opinion of the Judges, have more effect than the proposed system of allowing security to be taken from persons at the time of conviction of offences of the kind referred to above. The Judges consider that the power as at present exercised by Magistrates of taking security is sufficient, but that if the proposed addition to this power be made, the person ordered to find security should on completion of his term of imprisonment be allowed a certain period after release during which he would have the opportunity of obtaining sureties.

From COLONEL L. J. H. GREY, C.S.I., Commissioner and Superintendent, Delhi Division, to the Under-Secretary to Government, Punjab,—No. 207, dated Delhi, the 5th May 1888.

With reference to your No. 1251, dated 14th December 1887, asking for opinions on the surveillance of habitual offenders, I have the honour to submit printed copies of the proceedings of the Delhi Divisional Conference, 1888, on that subject. These proceedings consist of the summary of opinions of Deputy Commissioners obtained from each district and the resolutions of the Conference passed after due discussion.

DELHI DIVISIONAL CONFERENCE, 1888.

SUBJECT VI. A.

Surveillance of bad characters.

(*a*) Punjab Government Circular No. 1251 of 14th December 1887.

Asks opinions regarding amendment of the law so as to allow security to be taken from persons at the time of conviction, for the first or second time, of certain offences, notably those under Chapter XVII, Indian Penal Code, or to legalize a definite system of Police surveillance after release in such cases.

(*b*). Deputy Commissioner, Rohtak's No. 4 of 5th January 1888.

Considers that both the above systems ought to be adopted, but only with regard to offences under Chapter XVII of the Indian Penal Code. Bad characters should, on leaving their villages, report at the thana where they are going, by what route, the purpose of the journey, and the date of return. Also, while in their villages, they should report themselves daily to a lambardar, who should be personally responsible for informing the Police of their absence without leave.

It should be left to the courts to decide whether security should be taken, or police surveillance ordered, on the first or on the second conviction, subject to a right of appeal.

It should be lawful to take such action without judicial conviction and on the suspect's repute only.

(c) Deputy Commissioner, Umballa's No. 7 of 6th January 1888.

Considers it desirable to place on a more regular and a more effective footing the action now taken by the Police under Sections 31, 44 and 51, Chapter 14, Police Rules. The modes of surveillance should be defined, and breach of the rules by persons under the surveillance should be punishable with imprisonment and fine. Liability to surveillance should be restricted to persons whose cases come under Section 75 of the Indian Penal Code. In such cases the Police should exercise surveillance without any express magisterial authority. For other habitual criminals, the present bad livelihood provisions of the Criminal Procedure Code suffice.

(d) Deputy Commissioner, Delhi's No. 9 of 6th January 1888.

Considers the bad livelihood provisions of the Procedure Code to be quite unworkable. The surveillance exercised by the Police under the Police Rules should be legalized and defined. On a second conviction of robbery, reception of stolen property, lurking house trespass, or house breaking with intent to commit theft, the convicting Magistrate should direct surveillance for a term of years after release, and equally so on a first conviction of those offences, subject to the concurrence of the District Magistrate. The District Magistrate should be empowered to order surveillance on repute of bad livelihood. The reasons should be recorded in writing, but the order should be executive and not subject to judicial appeal.

(e) Deputy Commissioner, Gurgaon's No. 2 of 10th January 1888.

Considers that it should be optional with Magistrates to take security on second conviction of an offence under Chapter 17 of the Indian Penal Code. For persons convicted under Chapters 6, 12, or 17 of the Indian Penal Code, it should be lawful for the Magistrate to direct surveillance for any period not exceeding seven years. Such surveillance should be exercised by Police visit of inspection, rather than by summoning the suspects to the *thana*.

The present bad livelihood provisions of the Procedure Code should be made somewhat less stringent.

(f) Deputy Commissioner, Hissar's No. 239 of 4th February 1888.

Considers that Police surveillance is at present only a name, and fears it will never be much better; therefore prefers an extension of the system of taking security. Recommends that in all convictions coming under Section 75, Penal Code, the Magistrate should order security, for at least three years from the date of release. In all convictions under Chapter 17, first class Magistrates should have power to take security for two years, and District Magistrates should have similar power on convictions by second class Magistrates. Failing security, very strict Police surveillance should be substituted for the imprisonment now prescribed by law. Such surveillance should entail (1) weekly or fortnightly report by the suspect at the *thana*; (2) report of change of address; (3) report to a lambardar of any departure from village limits. Lambardars should authorize such departure by pass, and a suspect absent from his village without a pass should be liable to punishment.

(g) Deputy Commissioner, Karnál's No. 87 of 28th January 1888.

Considers Police surveillance worthless as at present exercised. Magistrates should have power to order security at the time of passing substantive sentence in certain cases.

(h) Deputy Commissioner, Simla's No. 55 of 1st March 1888.

Considers that superior Magistrates should have the option of taking security on first or on second convictions under Chapter XVII for a period of two years—subject to appeal, convicts should be released on expiry of sentence and allowed time to obtain security. Surveillance should be worked through *lambardars* by means of passes, under control of the Police. The District Magistrate should have power to order surveillance after one conviction under Chapter XVII, or other important chapters, and this at any time whether or not the accused has recently come out of jail.

Extract from the Proceedings of a Conference of the Deputy Commissioners of the Delhi Division, held at Umballa on the 19th—24th March 1888.

SUBJECT VI.A.

POLICE SURVEILLANCE.

The following modified Resolutions were moved by Mr. Anderson :—

I. That the bad livelihood provisions of the Criminal Procedure Code are unworkable.

II. That the old law should be restored which allowed security to be taken from those who were by repute bad characters or dangerous, and not merely from habituals.

III. That the law should be amended so as to allow convicting Magistrates to order, in addition to imprisonment, that security for good behaviour be given for a specified period on release from confinement; but that such security should be demanded only in cases of conviction under Chapter XVII of the Penal Code.

IV. That there should be a legalized system of Police surveillance, subject to the executive control of the Deputy Commissioner, the main features of which should be—

(*a*) That the suspect should report himself daily to a lambardar of his village specially selected for that purpose.

(*b*) That he should report himself twice a month at the thana.

(*c*) That he should not be absent at night from his home without a pass from the lambardar in charge.

(*d*) That the lambardar should have authority to give a pass for one night only.

(*e*) That the lambardar should be liable to punishment if the absence without leave of such suspect has not been at once reported at the thana.

(*f*) That if absence is required for more than one night, the suspect must go to the thana under the lambardar's authority, and procure from the Station House Officer a pass setting forth his destination, route, time covered by pass, thanas at which he must report himself, etc.

Provided that passes for a period not exceeding one week may be granted by zaildars specially authorized in that behalf by Deputy Commissioners.

(*g*) That absence without pass, or contrary to the terms of the pass, should render the absentee liable to punishment.

V. That the Deputy Commissioner should have authority to direct by written order that any person against whom a reasonable suspicion exists of his being a habitual thief, robber, burglar, or receiver, may be put under Police surveillance; and that this order should not be liable to appeal.

Resolution II was put to vote and lost as follows:—

For.	*Against.*
Mr. Anderson.	Mr. Kensington.
Mr. Maconachie.	Mr. Drummond.
Mr. Purser.	Mr. Clarke.
Colonel Grey.	Mr. Bulman.

The remainder were unanimously adopted.

From Colonel W. G. Waterfield, C.S.I., Commissioner and Superintendent, Peshawar Division, to the Officiating Under-Secretary to Government, Punjab,—No. 175, dated the Abbottabad, 2nd June 1888.

In reply to your No. 1251 of the 14th of December, I have the honour to forward in original the following reports from the Deputy Commissioners of this Division:—

Deputy Commissioner,	Hazara's No. 59 of the 11th January.
Ditto	Peshawar's No. 46 of the 11th February.
Ditto	Kohat's No. 235 of the 26th May.

These contain the views of the District Magistrates given at length.

2. My own opinion is that every Magistrate especially empowered under Sections 106 and 110 of the Criminal Procedure Code to demand security to keep the peace and security for good behaviour should be given further powers, allowing them to take such security up to the period of three years, with imprisonment in default, on conviction for the second time of any one of the offences enumerated in Schedule 2 of the Punjab Frontier Crimes Regulation, 1887.

3. As regards Police surveillance of ordinary bad characters after release, I think it would be difficult to work. There might be too many persons under those restrictions, and the Police might be unable to act up to their responsibilities; but I see no objection to attaching to security bonds for good behaviour a further proviso, either general or special, that the bad character concerned shall not leave the district in which he has his residence without communicating his intention and obtaining a pass through the Police Station in which his residence may be from the Police Officer of the district to the Police Officer of the district he is about to visit; this pass to be renewed from district to district.

4. Further in the districts of this Division the general question of the necessity for taking security to keep the peace or for good behaviour should be referable to Councils of Elders under the Punjab Frontier Crimes Regulation. This would, I think, do away with any necessity for an enquiry out of court such as is contemplated in Section 41 of the Punjab Frontier Crimes Regulation. Evidence such as is required would be forthcoming, and the lives and properties of those giving such evidence would not be endangered.

5. In the case of a second conviction of any one offence named in the schedule above alluded to or of a third conviction of any offence named in the schedule, the convict might be held liable to be classed as an habitual offender and to be placed under a system of Police surveillance.

6. The above measures are, I think, especially necessary in this Division owing to the district not having been disarmed, to the facilities for escape across the border into foreign territory, to the criminal instincts of the population generally, to the difficulties in obtaining evidence from a just fear of death or injury to person or property, to the difficulty in enforcing the responsibilities we attach to the position of village headman, to the increased facilities for locomotion by railway and otherwise, and for communication by post and telegraph, and to the organizations which no doubt are coming into existence for the committal of crime and for the disposal of stolen property. I am thinking more especially of the thefts of arms for the supply of the trans-border. I have no doubt that this trade is organized to a great extent, and will become yearly more difficult of suppression.

From A. F. D. CUNNINGHAM, Esq., C.I.E., Deputy Commissioner, Hazara, to the Commissioner and Superintendent, Peshawar Division,—No. 59, dated 11th January 1888.

I have the honour to acknowledge receipt of a letter No. 1251 of 14th December, from the Under-Secretary to Government, under your endorsement No. $\frac{1}{16}$ of 3rd instant, calling for opinions as to the utility of—

(1) amending the law so as to allow security to be taken from persons at the time of conviction * * * of certain offences; and

(2) legalising a definite system of Police surveillance after release.

2. As to the first point, I think it would greatly strengthen the hands of the Magistracy and tend to check crime if power were given to annex to a conviction for certain classes of offences an order directing that on release from imprisonment security for good behaviour for a term of three years should be given by the offender under penalty of liability to further imprisonment in default. This power should, I think, be reserved in cases of convictions for any of the following offences, *viz.*, Indian Penal Code, Sections 148, 201, 302, 304, 307, 308, 311, 325 to 327, 363 to 365, 376, 379, 381, 382, 384 to 388, 392, 393, 400, 413, 414, 428, 429, 435, 436, 449, 450, 452, 453, 454 to 459.

3. It further appears to me that experience of the working of the Criminal Procedure Act of 1882 shows that the change made in the description or definition of bad characters from whom security can be demanded (Section 110) has in the Punjab at least injuriously weakened what, under the Procedure of 1872, was a salutary power for repressing crime, and I think that a reversion to the provisions of the old law would be useful. I am aware that when the amendment of the Procedure Code of 1872 was under discussion in 1881, it was represented, chiefly, I think, from experience of other Provinces where conditions may be difficult, that the law, as it then stood, gave powers of demanding security wider than were necessary, and that there was danger of their being worked to annoy and inconvenience innocent persons on insufficient grounds. No doubt the power of sending persons up with a charge sheet under Section 505 of the Act X, 1872, may have been used tyrannically by the Police, but the restrictions which have now been put on the demand of security under Section 110, Act X, 1882, are such as to impair unduly the power of Magistrates for the prevention of crime. This effect may not be so apparent in cities, or in those parts of India which have been longest under our rule, the tendency of which is to deal with individuals and to loosen tribal or clannish ties which bound together village communities. But these ties are still strong, especially in the Western Punjab: so strong that it is difficult to get any but Police evidence against bad characters. In most villages in this part of the Province there are factions which follow rival headmen. However bad a man's character may be, he can easily find as many men among his own leader's followers to depose to his honesty as the Police can produce from the other side to show the contrary. Moreover, so great are the facilities at hand to avenge hostile evidence that it requires a strong inducement to make a man willing to come forward and openly make a statement in court against "an habitual robber" or thief.

characters is not of much use as a preventive measure. I have found that in any village where there is much crime it is due to a duplicity of the headmen as bad characters.

In many cases these men are doubtless, the men who commit crime, but they are either directly employed by the headmen as thieves, or they buy over the headmen, who accordingly suppress all evidence when crime is committed. I think that convicted bad characters should, as well as other convicted offenders, such as thieves and burglars, be subject to Police surveillance, and that they should be bound to report their movements to the Police.

Under present arrangements these men leave Yusafzai in many cases till the period of their security has expired, and doubtless many offences are committed by them in other parts of the Punjab. A condition might, I would suggest, be entered in their bonds compelling them to report their movements. I would suggest that Police surveillance on the same lines as that in force under English law should be instituted in cases where Magistrates may deem it necessary in preference to the taking of security for good behaviour as can now be done for keeping the peace under Section 106, Criminal Procedure Code. As regards the working of surveillance, I would suggest the burden of it being thrown on the convicted men themselves by making them furnish security not to leave their villages without permission and to report themselves to Police stations as may be ordered. I think that the lambardars would be generally incapable of preventing bad characters leaving their districts, and the present Police establishment would be insufficient to check their movements.

From R. UDNY, Esq., Deputy Commissioner, Kohat, to the Commissioner and Superintendent, Peshawar Division,—No. $\frac{235}{1805}$, dated the 26th May 1888.

I have the honour to reply to your Circular No. $\frac{1}{16}$, dated 3rd January last, and to enclose copy of a letter No. 7, dated 11th idem, to my address, from the Assistant Commissioner, Thal, expressing his views on the question.

2. My own opinion is that Police surveillance of criminals would have very little effect in checking crime—at any rate in the Kohat District; and, though the taking of security (for a term of two or three years) at time of conviction might be of some use, no real improvement can be looked for without a radical change in the Criminal Procedure Code with the object of making it *at least* as easy to demand security as it was under Act X of 1872. I observe that in many districts, both Cis and Trans-Indus, security for good behaviour is still taken from a large number of persons, but I venture to assert that in 99 per cent. of such cases it would be found on examination that the provisions of the existing law had not been complied with, and that the proceedings would be liable to be upset if brought before the Chief Court on the Revision side. As the law stands, it is next to impossible to demand security legally, and even when a man has repeated convictions recorded against him up to within a very short period of his being called upon to give security, I believe it has been ruled by the Chief Court that this is not sufficient unless it can be proved that he is *still* an "habitual" offender at the time the proceedings against him are taken!

3. In pressing for an amendment of the general law on the subject which would affect all India, I am perhaps suggesting what is not within the range of practicability; but in frontier districts, where especially security would be most useful as a preventive measure, the restrictions of the Procedure Code are a great impediment, and I would strongly urge the amendment of the Crimes Regulation of 1887 so as to make the provisions of sections 39 and 41 to 46 applicable to reputed thieves, burglars, and robbers, as well as to persons suspected of an intention to commit murder or culpable homicide. At present the heading of these sections "*Security for good behaviour*" is a complete misnomer, as they only provide for security against serious breaches of the peace.

When the Committee of which I was a member sat at Peshawar in February 1886 to amend and consolidate the Frontier Regulations, I proposed that advantage should be taken of the opportunity to insert some provisions for demanding security from bad characters more freely than the ordinary law would permit, but the Committee were of opinion that as the primary object of Government was to reduce bloodshed, it might endanger the acceptance of our recommendations if we asked for too much in other directions. On my pointing out, however, that the crimes of burglary, robbery, and dacoity were a very fruitful source of murder in Trans-Indus districts, it was agreed that, in this view of the matter, section 39 as it stood would justify the taking of security from reputed burglars or robbers; and at my instance a clause was then inserted (section 46 of the Draft Regulation) laying down that such security,

though primarily demanded to prevent bloodshed, would be liable to forfeiture on conviction of any offence punishable with imprisonment.

4. This perhaps was needlessly stringent, and it would have sufficed to say "on conviction of any offence punishable with imprisonment *for three years or upwards.*" Although, too, this was as much as I could prevail upon the Committee to concede, it was, I admit, an unscientific way of bringing burglars and robbers within the grasp of the security law. When, therefore, the Regulation, as finally approved by the Governor General in Council, was eventually promulgated, I was not surprised to find it laid down (Section 42) that forfeiture of the security bond was only to follow on the commission of an offence under Chapter XVI of the Penal Code (offences against the human body) punishable with imprisonment for a year or upwards. The result is that a person under such security may commit any offence against property under Chapter XVII with impunity as far as estreatment of his sureties is concerned, and, though we have introduced a law of exceptional severity for the punishment on conviction by jirga of offences against property as well as the person, we have declined entirely to avail ourselves of the greatest of all preventive measures since security for "good behaviour" properly so called can only be taken as in Cis-Indus districts under the Criminal Procedure Code, which, if the requirements of the law are strictly fulfilled, is practically prohibitive.

From CAPTAIN H. P. P. LEIGH, Assistant Commissioner, Thal, to the Deputy Commissioner, Kohat,—No. 7, dated 11th January 1888.

In compliance with your memorandum No. 39 of 6th instant, I have the honour to offer the following remarks.

2. I think that habitual offenders might with great advantage be subjected to some such similar surveillance as is exercised over the members of criminal tribes by the Police, and which in their case might take the form of their periodically presenting themselves at their respective thanas. This, however, would be a more useful provision Cis-Indus than on the frontier, where it would be an easy matter for such men to abscond across the border unless security were taken from them for such appearances, and it seems to me that the case might be met generally by empowering Magistrates, when taking security for good behaviour under the ordinary provisions of the law, to order men against whom more than two previous convictions have been obtained, or who have been accused oftener than twice, to report themselves periodically at thanas in the manner suggested, making any breach of this order a reason for forfeiture of security, unless good cause were shown to the contrary or leave to go elsewhere had been previously obtained from the District Superintendent of Police.

3. It further appears to me that the ordinary provisions of the law would be much more effectual than they are now if the orders of the Magistrates taking security were less interfered with than at present. It is most difficult to get good proof of a man being an "habitual offender," and I think that his reputation in this respect should be allowed to go a great way towards proof. Where such solid proof is required, most Magistrates, I think, hesitate to pass orders for security to be given against many men from whom they feel certain it should be taken, because they know the order is sure to be upset on appeal, for want of the evidence deemed to be essential. Many a man escapes punishment over and over again by being released on appeal through some quibble of the law, and though he may be well known to be a thorough-going blackguard, yet there are no convictions against him; no proof is therefore obtainable of his being "an habitual" offender, and he is allowed to be at large until again brought upon a fresh charge, in all probability to escape again. Unless, then, the bad livelihood sections of the Procedure Code are altered so as to give a wider discretion to Magistrates and restore the state of things existing under the old law, which was naturally more effective than the new, I think that it would be an excellent thing to empower Magistrates to demand security from any person brought up for a third or subsequent offence under Chapter XVII of the Penal Code, whether convicted or not, to be furnished on completion of his sentence, and renewed until he can show good cause why he should be excused; and, in addition to this, that more latitude be allowed in the necessity for evidence adduced against offenders under the bad livelihood sections of the Code, *i.e.*, that the evidence of the Police themselves should be allowed a good deal of weight. They know pretty well who are the bad characters, and Maliks and others are afraid to give evidence against bad characters on account of the certainty that revenge will be taken against them afterwards.

From W. M. YOUNG, Esq., Commissioner and Superintendent, Jullundur Division, to the Officiating Secretary to Government, Punjab,—No. 1812, dated the 16th June 1888.

I have the honour, with reference to your Circular No. 1251, dated 14th December 1887, regarding the question of amending the law so as to provide for the surveillance of habitual offenders, to forward the replies noted in the margin, received from the Deputy Commissioners of this Division, and to communicate the following remarks.

No. 4, dated 3rd January 1888, from Deputy Commissioner, Hoshiarpur.
No. 4, dated 6th January 1888, from Deputy Commissioner, Jullundur.
No. 53, dated 6th February 1888, from Deputy Commissioner, Ferozepore.
No. 582, dated 2nd May 1888, from Deputy Commissioner, Kangra.
No. 244, dated 7th June 1888, from Deputy Commissioner, Ludhiana.

2. The opinion is unanimously held that some alteration in the law is desirable, and in this opinion I concur.

I have looked over the Chief Court rulings under the former law and under Act X of 1882 with the following result. I find that—

(1) security cannot be required from a convicted person on the ground of the conviction alone (18 of 1866, 53 of 1866, 34 of 1867, 9 of 1871, 6 of 1883);
(2) when sentence of imprisonment is passed, an order cannot be given that the prisoner immediately on his release should be called upon to give security for good behaviour (38 of 1869);
(3) a Magistrate cannot enter a man's name in a register of bad characters (29 of 1870).

Most of these rulings were given under previous Acts, but I think they apply to the present law. Those given under heads (1) and (2) seem to me an unnecessary restriction in the case of a Magistrate of the district, and I think such Magistrate should have power to demand security for good behaviour or to prescribe a period of Police surveillance in the case of any person sentenced in his own court, or in any other criminal court, on report of the officer presiding or otherwise, if the offence committed falls under Chapter XVII, Indian Penal Code, and is—

(1) a second offence under that Chapter; or
(2) of such a character as to point to the desirability of demanding security.

3. In the case of sentenced persons, I cannot see any objection to this discretion being permitted to an officer charged with the criminal administration of a district. The mode in which Police surveillance should be exercised might be defined, and the extent to which it should be resorted to would have to depend mainly on the capability of the police establishment to carry it into effect without accepting an unnecessary burden or imposing an excessive one on the delinquent. On this point the Inspector General of Police would no doubt be consulted.

From R. L. HARRIS, Esq., Deputy Commissioner of Hoshiarpur, to the Commissioner and Superintendent, Jullundur Division,—No. 4, dated the 3rd January 1888.

In reply to your Circular No. $\frac{271}{3511}$, endorsed on Government letter No. 1251 of 14th ultimo, I beg to express opinion as called for therein.

There can, I think, be no question that a system of Police surveillance after a second conviction of an offence against property (under Chapter XVII, Indian Penal Code) would be of the greatest efficacy in the repression of crime. This system would, I think, be far more preventive than an extension of the law for taking security, which is as a rule easily procured by the more important criminals, and easier of evasion since a fresh conviction remains as hard of proof as a previous one, and securities are therefore rarely forfeited; whereas a Police surveillance would constantly bring before the criminal's mind the advisability of mending his ways.

From COLONEL A. HARCOURT, Deputy Commissioner, Jullundur, to the Commissioner and Superintendent, Jullundur Division,—No. 4, dated the 6th January 1888.

I have the honour to acknowledge the receipt of your Circular No. $\frac{271}{3511}$ of 25th ultimo, enclosing copy of Punjab Government No. 1251 of 14th idem, for expression of opinion.

2. My view is that habitual offenders require more stringent treatment than is at present dealt to them, and I consider that in all cases of second conviction the law might be amended so as to permit of security being taken from persons at the time of conviction at the option of the Magistrate trying the case; and also in all cases of first convictions under the heads following :—

Offences against public tranquility.

145, Indian Penal Code (joining unlawful assemblage).

False evidence and offences against public justice.

194, Indian Penal Code (fabricating false evidence, etc.).

Offences relating to coin.

232, Indian Penal Code, counterfeiting coin (with sections 233, 234, 235).

Offences affecting human body.

302, 109, Indian Penal Code (abetment of murder).

312, Indian Penal Code, causing miscarriage (with sections 313, 315, 316).

364, 365, 366, 367, 368, 369, Indian Penal Code (kidnapping).

376, Indian Penal Code (rape).

379, 380, 381, 382, Indian Penal Code (theft).

392, 393, Indian Penal Code (robbery).

394, Indian Penal Code (voluntarily causing hurt, etc.).

395, 397, 399, 400, 401, 402 (dacoity).

411, 412, 413, 414, Indian Penal Code (dishonestly receiving stolen property, etc.).

452, 453, 455, 456, 457, 458, 459, Indian Penal Code (house trespass).

Offences relating to documents.

468, 471, 474 (forgery).

Offences relating to marriage.

498, Indian Penal Code (enticing away).

3 I beg further to add that it appears desirable to legalize a definite system of Police surveillance after release in the cases tried under the sections quoted above and after all second convictions.

From COLONEL F. M. BIRCH, Deputy Commissioner, Ferozepore, to the Commissioner and Superintendent, Jullundur Division,—No. 53, dated the 6th February 1888.

In reply to your Circular No. $\frac{2711}{3511}$, dated 23rd December 1887, calling for an expression of opinion as to the advisability of amending the law so as to allow security to be taken from persons at the time of conviction, either for the first or second time, of certain offences, notably those under Chapter XVII of the Indian Penal Code, I have the honour to state that I am of opinion that it would be advisable to amend the law so as to allow security to be taken from persons at the time of conviction, which would be only a return to the practice formerly prevailing in the Punjab, which worked well.

2. As regards Police surveillance, it appears to me that the Police Code already affords sufficient departmental surveillance, and any further interference is not required.

From E. O'BRIEN, Esq., Deputy Commissioner, Kangra, to the Commissioner and Superintendent, Jullundur Division,—No. 582, dated the 2nd May 1888.

I have the honour to acknowledge the receipt of your letter No. $\frac{2711}{3511}$, dated 23rd December 1887, forwarding, for opinion, a letter No. 1251, dated 14th December, from the Secretary to Government to all Commissioners, regarding the surveillance of habitual offenders.

In reply, I have the honour to state that a law is certainly required legalising and regulating the surveillance of habitual criminals. The necessity of surveillance does not need any argument. That the Police should keep themselves acquainted with the habits and movements of persons who have committed heinous offences is part of the preventive law of every civilised country. Without the power of surveillance the Police are really helpless against habitual offenders. I think that a short Act, framed on the lines of the English Act, will do all that is required. The list of offences which will entail surveillance will of course be adjusted to the criminal law of India. So necessary has the surveillance of habitual criminals been found that it is generally practised by the Police under the departmental rules for patrolling. I have often had petitions given to me, praying that persons may be relieved from being awakened at night by the police. When such petitions are presented, the District Magistrate, under the present law, ought to order the police not to molest the petitioner, however much he be known to be habituated to crime.

From LIEUTENANT-COLONEL W. J. PARKER, Deputy Commissioner, Ludhiana, to the Commissioner and Superintendent, Jullundur Division,—No. 244, dated the 7th June 1888.

With reference to your Circular No. $\frac{271}{3511}$, dated 23rd December 1887, forwarding Punjab Government Circular No. 1251, dated 14th December 1887, and asking for an expression of opinion on the subject of amending the law so as to provide for the surveillance of habitual offenders, I have the honour to state as follows.

2. There can, I think, be no doubt that the powers conferred on Magistrates by the provisions of the old law, Section 305, Act X of 1872, exercised a wholesome effect in regard to the prevention of crime.

3. The difficulty of obtaining evidence sufficient to satisfy the requirements of the law on this subject as now amended by Section 110, Act X of 1882, renders it exceedingly difficult to obtain a conviction, and comparatively few persons are now placed on security.

4. It is true that the last clause of Section 117 provides that the fact of a person being an habitual offender may be proved by evidence of general repute, but it is understood that this evidence is not sufficient unless the offender has been convicted more than once, whereas under the old law a person need not have been convicted at all to bring him within the scope of the security sections. The formalities now required, moreover, by Sections 111 to 118 greatly impede the speedy disposal of such cases.

5. I think it will be found that the marked increase in crime which has of late taken place dates from the time when the change in the law as regards bad characters became generally known among the people.

6. There can be no doubt that some amendment in the law is necessary in order to give Magistrates power to deal summarily with this class of offenders. I would advocate an amendment of the law so as to allow of security for good behaviour being taken from persons at time of conviction in all cases where there had been a previous conviction under Chapter XII or XVII, Indian Penal Code, and I also think it would be desirable to extend the law so as to allow of security being taken from persons who have not been convicted, but who are nevertheless proved by evidence of general repute to be habitual offenders; as their is no doubt that many such characters escape conviction altogether. This power existed under the old law, and had a very wholesome effect.

7. The system of surveillance suggested would probably be found difficult to work effectually with the scattered class of criminals who would come under its operation, though simple enough in the case of the criminal tribes, who are for the most part collected together in isolated villages where proper arrangements can be made for watch and ward; and it would be an additional strain on an already over-worked and under-manned police force which there seems to be no prospect of augmenting.

8. In conclusion, I regret the delay which has occurred in disposing of this reference, but the Circular was mislaid for some time and was consequently overlooked.

From COLONEL R. P. NISBET, C.I.E., Commissioner and Superintendent, Rawalpindi Division, to the Secretary to Government, Punjab,—No. 1769, dated the 6th July 1888.

In reply to your No. 1251, dated 14th December 1887, calling for opinions as to the advisability of legalizing measures for the proper surveillance of habitual criminals by the Police, I have the honour to forward in original the papers marginally noted, and to remark as follows.

Deputy Commissioner, Sialkot's No. 135, dated 9th April 1888.
Deputy Commissioner, Gujrat's No. 1259, dated 29th December 1887.
Deputy Commissioner, Gujranwala's No. 91, dated 25th April 1888.
Deputy Commissioner, Shahpur's No. 90, dated 4th April 1888, and enclosure.
Deputy Commissioner, Jhelum's No. 343, dated 24th December 1887.
Deputy Commissioner, Rawalpindi's No. 354G., dated 8th February 1888, and enclosure.

2. It will be seen that the opinion in favour of such a measure is almost unanimous, and various suggestions are offered as to the manner in which the system should be worked. I myself consider that the surveillance of habitual criminals is absolutely necessary for the repression of crime, and I have already expressed an opinion to that effect in paragraph 9 of my No. 1249, dated 16th May last, when reporting on the causes of the increase of crime noticed of late in the Criminal and Police Reports of the Province.

3. As remarked in the letter under reply, the only measures provided by the existing laws for the control of criminals are the Criminal Tribes Act, 1871, and the provisions of the Code of Criminal Procedure for demanding security from habitual offenders of certain descrip-

tions. The former applies to special classes of persons; the latter, though effective to a great extent if properly worked, are insufficient of themselves to prevent the increase of crime, and the greater stringency of surveillance would have a more deterrent effect. Before making any proposals in regard to surveillance, I will offer a few remarks on the law as to bad characters as it stands.

4. The existing provisions of the Criminal Procedure Code for demanding security from bad characters can only be worked by a Magistrate of a District or Sub-Division or by a first class Magistrate specially empowered in this behalf. This is a great restriction on the operation of the law. The Magistrate of the District is already overworked, and the number of Sub-Divisional Officers is not great. The consequence is that such cases have to be brought into head-quarters from long distances for trial or be neglected almost entirely. They can, it is true, be taken up on tour, and are doubtless best investigated locally, but the investigating officer is not ubiquitous, and when one part of a district is being attended to another is neglected. Besides, the procedure as enjoined by law and by the orders of the Chief Court is cumbrous; and while, on the one hand, it burdens the officers hearing such cases, it, on the other, allows many loop-holes and chances of escape to the criminals which they are not slow to avail themselves of. If the cases are brought into head quarters a great deal of trouble and expense is caused to the witnesses, and rather than undergo this they would see all the bad characters in the province free to do as they willed.

5. As a first step towards making the most of this valuable power to control criminals allowed by the law, it would be desirable to permit Magistrates of lower grades than those mentioned to investigate and pass orders in such cases. I certainly think that the power might be delegated to Magistrates of the second class, and that the local Magistrates, that is, the Tahsildars exercising second class powers, should be authorised to deal with such cases. To prevent oppression or injustice, the habitual offender might be allowed reasonable bail as a right till he can apply to the District Magistrate as a reviewing officer if he were dissatisfied with the subordinate Magistrate's finding, but such an application should be made within a limited time, say, fifteen days, so as to discourage appeals in unnecessary cases. The procedure also in such cases might be more summary than at present laid down.

6. As a further means of protecting the public at large from habitual criminals, I think that in all cases falling under Chapter XVII of the Indian Penal Code and in such other cases as the Government may think fit, the convicting Magistrate should be empowered to either require the criminal to provide security for his good behaviour for a certain number of years after the expiration of his sentence, or to place him under police surveillance.

7. For this purpose an Act of the Legislature following almost exactly the lines of the law in force in England (34 and 35 Vict., Chapter 112, Section 8) should be passed, except that it should be optional with the Court to demand security or to order surveillance. Rules with reference to surveillance and reporting of criminals would have to be framed with care, and any interference in preventing a man following a lawful occupation avoided.

8. With some such measures as those advocated in the present correspondence and an improvement in the present police and chaukidari system as that already suggested in previous correspondence, I think that a marked diminution of crime might be looked for.

9. In view of any fresh legislation being possibly agreed to, it may not be out of place to again mention here what I have several times before advocated, and which is the very reverse of further coercive measures against habitual offenders who might hereafter fill and embarrass our jails, namely, that some enactment would be very just and serviceable for dealing with casual offenders, by which Magistrates might, in certain cases where conviction for offences was right and proper, be left at liberty to suspend the execution of a sentence of imprisonment for a certain time when, if the convicted offender had kept clear of offence, the sentence should lapse; or if, on the other hand, the offender again fell into crime, then on second conviction his first sentence or any part of it should also be executed against him.

From Major J. A. L. Montgomery, Deputy Commissioner, Sialkot, to the Commissioner and Superintendent, Rawalpindi Division,—No. 135, dated the 9th April 1888.

Law to provide for the surveillance of habitual offenders.

I have the honour to send a letter written by my predecessor, Lieutenant-Colonel Roberts, on the above subject.

From LIEUTENANT-COLONEL A. S. ROBERTS, Deputy Commissioner, Sialkot, to the Commissioner and Superintendent, Rawalpindi Division,—dated the 24th March 1888.

Law to provide for the surveillance of habitual offenders.

In reply to your Circular No. $\frac{197}{3049}$, dated 23rd December last, I beg to state that I am of opinion that it is advisable to amend the law so as to allow security to be taken from persons at the time of conviction for offences under Chapter XVII, Indian Penal Code; also that some definite system of Police surveillance after release in such cases should be legalized.

From G. KNOX, Esq., Deputy Commissioner, Gujrat, to the Commissioner and Superintendent, Rawalpindi Division,—No. 1259, dated Gujrat, the 29th December 1887.

I have the honour, with reference to No. 1251 of 14th December 1887, from Under-Secretary to Government, and Circular No. 197, dated 23rd December 1887, from your office, to state that I have already replied to the former circular alluded to in paragraph 5 of the Government letter.

2. As regards the necessity of amending the law regarding surveillance of habitual offenders, I am inclined to think that the amendment proposed would not be an effectual preventive. An habitual offender now generally receives a very severe sentence, and I am doubtful if it would be advisable to subject him to be further harassed by the Police for a long period.

3. I must take this opportunity of advocating what I have brought to notice before as regards security from offenders. Much correspondence has passed on the subject, and the general procedure is that such cases should be decided on the spot, because it is easy then to obtain evidence, and this is difficult when a long march has to be undertaken by accused and witnesses to the Sadr. This is most true, and would be effective if the Police were ready to give the evidence on the date fixed for the Magistrate's arrival, if the Magistrate were certain to go to the village, if the witnesses were not brought over, if the accused had not decamped in anticipation till the camp had passed on.

4. The proper man to take security is the local Magistrate, who has personal knowledge, and who is constantly moving about the villages in a limited area and is accessible at all times. Under the present system the Tahsildar is the local Magistrate, but it will probably be found necessary to have a special local Magistrate solely for criminal work. Until this is carried out, the Tahsildar should have powers to take security from all bad characters. This would no doubt act as the greatest preventive of crime.

5. The least consideration of the subject would point to no other conclusion, and I am convinced that this procedure will be adopted when advocated by more influential advisers than myself.

From LIEUTENANT-COLONEL R. BARTHOLOMEW, Deputy Commissioner, Gujranwala, to the Commissioner and Superintendent, Rawalpindi Division,—No. 91, dated the 25th April 1888.

In reply to your Circular No. $\frac{197}{3049}$, dated 23rd December 1887, I would first explain that I left the reference unanswered for some time because I thought that during my cold weather campaign against habitual offenders further measures for their restraint than those contained in my letter No. 300A., dated 8th November 1887, might suggest themselves to me.

I think that every person convicted for a second time or more under Chapter XVII, Indian Penal Code, should be put on security by the Magistrate deciding the case on the evidence of the convictions.

All persons with two or more convictions against them, or who have twice or oftener been put on security as habitual offenders, should be under Police surveillance as criminal tribes are.

They should not be allowed to leave their villages without the leave of their lambardars, or their Police circles without leave from the Deputy Inspectors.

Such measures would, I think, have the best effect in decreasing crime, especially if at the same time the village chaukidar system was reorganized by giving them better pay, removing them from the influence of the lambardars, and placing them entirely under the District Superintendent of Police, by whom they should be paid. They should be entertained and dismissed by the District Superintendent of Police, under the control of the Deputy Commissioner, and should be residents of other villages than those they are appointed to as chaukidars.

From J. WILSON, Esq., Deputy Commissioner, Shahpur, to the Commissioner and Superintendent, Rawalpindi Division,—No. 90, dated the 4th April 1888.

In compliance with your Circular No. $\frac{197}{3049}$, dated 23rd December 1887, I have the honour to submit a note by Mr. O'Connor, District Superintendent of Police, on the question of amending the law so as to provide for the surveillance of habitual offenders, together with the following remarks.

2. Under the present law, which requires separate proceedings before security to be of good behaviour can be demanded, it is often difficult to arrange for the large number of such cases required to be taken up by Magistrates of the 1st class in addition to their other pressing work. Moreover, when a man has been twice convicted, say of house-breaking, it seems quite unnecessary to undertake a further enquiry in order to prove that he is a dangerous character. It would save much time and would not endanger the liberty of innocent persons if it were provided that any person convicted for the second time of an offence under Chapter XVII of the Penal Code or other sections to be specified might, in addition to any other punishment, be called upon to provide security for his good behaviour on his release, or be placed under Police surveillance for a term of years, or both. I would not go so far as to allow this to be done on first conviction, as some proof of *habitual* crime should be required. In connection with this subject I would invite attention to paragraphs 6 and 16 of Chief Court Circular XLIV, according to which a Magistrate should ordinarily issue a summons in cases under Section 110, Criminal Procedure Code. If this procedure were adopted, it would be difficult to get habitual offenders to appear in Court, and there seems no reason why the Police should not exercise in such cases the power of arresting without warrant given them by Section 55 of the Code. There is another difficulty about security cases. They can be taken up only by Magistrates of the 1st class, and it is only at long intervals that a Magistrate of that standing can visit outlying Police stations. I would suggest that 2nd class Magistrates be empowered to conduct the enquiry into such cases, sending their proceedings to the District Magistrate for confirmation.

3. As regards surveillance of habitual offenders, Sections 17, 18 and 19 of the Chaukidari Rules under Act IV of 1872 require village headmen and watchmen to keep strict watch over the movements of bad characters and report them to the thana; but these provisions will remain more or less a dead letter until the village watchmen are reorganized, better paid and brought under direct control of the Police. The present Police system of surveillance is laid down in Chapter XIV, Sections 44—53, of the Police Code, and particularly in Section 51, where departmental surveillance is described as such close watch of the movements of the persons concerned as may be practicable without any illegal interference with such movements. But seeing that surveillance is not legalized at all, it must be difficult indeed to carry it out without illegal interference. It would certainly make serious crime more difficult if persons sentenced to be kept under surveillance or to give security for good behaviour were compelled, under pain of imprisonment, to obtain permission from the District Superintendent of Police before leaving the district, to report themselves once a month or oftener to the officer in charge of the Police station or to some one approved of by the District Superintendent of Police (such as a zaildar), and before leaving the village to report their movements to a lambardar. Such an order might be passed on a second conviction in addition to other punishment or in cases in which security for good behaviour is demanded. All Magistrates of the 1st class should have the power to pass such an order, and the District Magistrate should be empowered to pass it on cases reported to him by Magistrates of the 2nd or 3rd class. It is no doubt true that the modification of the law here advocated would be a further interference with the liberty of the subject, and would confer powers on the Police which, like all other powers, might be abused, but it would only be bad characters that would suffer, and the advantage to the general community from the resulting diminution of crime which may be confidently expected would be so great as to make the hardship imposed on habitual criminals insignificant in comparison.

Memorandum by T. A. O'CONNOR, Esq., District Superintendent of Police, on the law relating to bad characters and habitual offenders,—dated Camp Midh, 12th March 1888.

Before giving an opinion on the Government Circular No. 1251 of the 14th December 1887, regarding the law relating to bad characters and habitual offenders, I think it advisable to take a retrospect of the law as it has hitherto existed, and to notice the different amendments which have taken place from time to time.

2. Commencing with Act XXV of 1861, Section 101 of that Act empowered officers in charge of Police stations to arrest without warrant any person lurking within the limits of their stations who had no ostensible means of subsistence, or who was a reputed robber, house-breaker, thief, receiver of stolen property, or of notoriously bad livelihood; and Sections 295, 296 and 297 empowered the Magistrate of the district, or an officer exercising the full powers of a Magistrate, to punish such persons, the minimum sentence being security for good behaviour for six months, or in default six months' imprisonment, the maximum three years.

3. Appeal against such sentences lay to the Court of Sessions under Section 409 of the Act.

4. It was necessary under this Act to prove by evidence that the accused had no ostensible means of subsistence, or that he was by repute a robber, house-breaker, thief, receiver of stolen property, or of notoriously bad livelihood.

5. It was difficult to prove against any body that he had no ostensible means of subsistence. Even Sansis, Harnis, Dhinwars, Gormungs, Haburas and other wandering gangs of professional thieves found it easy to prove that they lived on the charity of the people or by performing menial offices, such as carting manure, watching fields, etc., and by making ropes, baskets, grain-sifters, etc.

6. And Magistrates were disinclined to fill the jails by enforcing the law against such gangs. The general procedure was to pass them on from one district to another!

7. Regarding reputed robbers, thieves, etc., the evidence the Police used to bring forward was—

(1) entries in the Conviction and Surveillance Registers.

(2) the evidence of lambardars and other respectable men of the locality.

8. Some Magistrates would receive the entries in the Conviction and Surveillance Registers as evidence, if their correctness was vouched for by the officers who made them; others rejected such entries altogether, and demanded the production of files of cases. These files being in the Magistrate's own office, the Police could not produce them, and it was often found that they had been destroyed after the period fixed by departmental rules for the destruction of records.

9. Lambardars and other respectable men were very unwilling to give evidence, because the accused were acquitted oftener than being punished, and generally vented their spite on the witnesses by foul abuse and stealing their cattle and property. The law gave the witnesses no protection whatsoever.

10. No surveillance of any sort was exercised by the Police over such persons; they could come and go as they liked, and absent themselves from their homes as long as they wished.

11. It is true that the sureties of persons convicted were responsible for their good behaviour, but this responsibility lasted only till the period of the security bond. When this expired the bad character was at liberty to begin his evil practices afresh.

12. The next law passed was Act XXVII of 1871, but this was passed specially against known criminal tribes, *viz.*, Sansis, Pakhiwars, Harnis and Gormungs, and subsequently the Biloches of the Umballa and Karnal Districts, and the Minas and Dhinwars of the Gurgaon District were included in its operation. As I have had experience regarding the Minas and Dhinwars of the Gurgaon District, the Harnis of the Hoshiarpur District, and the Gormungs of the Rawalpindi District, I will state what the Police procedure was regarding these:—

(*a*) Lists were made of all males from 12 to 60 years of age, and wherever practicable, the descriptive roll of each individual was entered opposite his name, with a list of the cases in which he had been convicted.

(*b*) A roll-call was held morning and evening, and the names and description of absentees without leave were circulated to as many districts as possible.

(*c*) On the return of such absentees, they were arrested and brought before the Magistrate for trial, and generally fined.

(*d*) No one was permitted to absent himself without special written permission from the District Superintendent of Police.

13. Some Magistrates approved of these measures, but some had sentimental ideas regarding interference with the liberty of the subject, and refused to punish absentees and these, by correspondence and personal influence, managed to have the rules greatly relaxed so that at the present day there is really no surveillance whatsoever exercised over criminal tribes.

14. Act XXVII of 1871 did not, however, in any way give authority to the Police to keep under surveillance other habitual offenders.

15. I proceed now to consider Act X of 1872.

16. Section 94 of this Act seems to me to be in no way different from Section 101 of Act XXV of 1861, although I observe there is a comma after the words "lurking within the limits of such station." But Sections 504, 505 and 506 of the Act changed very considerably the previous law on the subject.

17. Under Act XXV of 1861 it was ruled that action taken under Section 296 should be quite irrespective of any proceedings on account of any offence committed. It was also ruled that where a Magistrate, after convicting and sentencing a person to imprisonment, had directed that he should be brought up at the expiration of his sentence to give security for his future good behaviour, the order was illegal; but he might after discharge from imprisonment be brought up and dealt with under the Act.

18. Act XXV of 1861 also empowered only Magistrates of districts and full-power Magistrates to take up such cases, but Section 504 of Act X of 1872 extended to Magistrates of the 2nd and 3rd classes power to enquire into and take evidence in such cases and to forward their proceedings to the Magistrate of the district to pass orders thereon.

19. The Sessions Judge, too, who under the previous Act had only appellate jurisdiction, was empowered under Act X of 1872 to send persons in custody to the Magistrate of the district for security to be taken from them.

20. It is true that there is a ruling of the Bombay High Court under Act XXV of 1861 that the Sessions Judge had this power, but there is nothing in the Act to bear out this ruling, and the new Act was probably framed so as to supply this deficiency.

21. Section 505 of Act X of 1872 included dangerous characters also as persons from whom security might be taken.

22. Section 506 of Act X of 1872 is very similar to Section 297 of Act XXV of 1861.

23. But on the whole the new Act gave Magistrates more power to cope with bad characters. It however contained no provision legalizing surveillance over habitual offenders. The Police procedure under the Act was the same as under Act XXV of 1861.

24. I refer now to Act X of 1882. The sections against bad characters and habitual offenders are 55, 109 and 110.

25. The difference between these sections and those of Act X of 1872 is that—

(1) Habitual extortioners are included in the list of persons who may be arrested by the Police and punished by the Magistrates.

(2) Dangerous characters and persons of notorious bad livelihood have been excluded.

(3) The periods for which security can be taken are six months and three years, instead of six months, one year and three years.

26. There is no provision for surveillance of habitual offenders.

27. The Police procedure has been to submit a report to the Magistrate detailing the evidence against the accused and applying for warrants. The accused on arrest are taken before the Magistrate, who frames a charge and hears evidence, and proceeds to convict or acquit, according as the charge is proved or not.

28. I consider the present law is very faulty, and that some provision is urgently needed for the surveillance of habitual offenders. Orders have recently been issued by the Government of India defining the persons to be considered as habitual offenders, but I think that, instead of leaving it to Magistrates to decide who are or are not habitual offenders, a general rule ought to be framed that all persons convicted more than twice of certain offences are to be considered as habitual offenders and to be kept under strict surveillance.

29. I think the offences to be specified might appropriately be the following :—

Chapter 10, Indian Penal Code, Section 182.

Chapter 11, Indian Penal Code, Sections 193 to 201, 209 to 212, and 216.

Chapter 12, the whole.

Chapter 16, Sections 302 to 304, 307, 308, 311, 316, 325, 326 to 329, 354, 356, 363 to 373.

Chapter 17, Sections 379 to 389, 392 to 402, 406 to 414, 417 to 420, 429, 435 to 440, 447 to 462.

Chapter 18, Sections 465 to 474.

30. Strict surveillance I would define as —

(1). Not being allowed to leave their homes without a ticket-of-leave from the District Superintendent of Police. Or, if it is considered inadvisable to invest District

Superintendents of Police with this authority, then the ticket-of-leave should be given by the Magistrate of the district.

(2) The habitual offender to report himself at the Police station once a month accompanied by the chaukidar of his village, and to give an account of his mode of life.

(3) The Police to have the power to look them up and to report on their presence or absence, their mode of living, etc., etc.

31. Punishments might also be framed for infringement of these rules.

32. I have not got the Acts XXXIV and XXXV Vict., Cap. 112, Section 8, by me, and am therefore unable to give any opinion about it. But if it has been found effective in England, there is no reason why it, or an Act drawn up on the same lines, should not be introduced into India. There is no question that some very effective measures are urgently needed for keeping habitual offenders under strict check.

From COLONEL C. MCNEILE, Deputy Commissioner, Jhelum, to the Commissioner and Superintendent, Rawalpindi Division,—No. 343, dated the 24th December 1887.

In reply to your No. $\frac{197}{3049}$, dated 23rd instant, I have the honour to give my opinion that there appears to me no question as to the advisability of surveillance of offenders after release, and I think it would be more efficiently done by enabling the Courts to demand security at the time of conviction. If it takes the form of Police surveillance merely after release, it will probably open a way to more blackmail being paid to the Police, while it will be difficult to secure really efficient surveillance over all who can make it worth the while of the Police to favour them.

From J. W. GARDINER, Esq., Deputy Commissioner, Rawalpindi, to the Commissioner and Superintendent, Rawalpindi Division,—No. 354 G., dated 8th February 1888.

In reply to your Circular No. $\frac{197}{3049}$, dated 23rd December last, I have the honour to forward a letter (No. 71, dated 12th January 1888) from the District Superintendent of Police, and to state that habitual offenders certainly require more stringent treatment than can legally be dealt to them at present, and this treatment should include a legalized system of Police surveillance instead of the present system of illegal supervision which the Police exercise over the persons whose names they have entered on their register of bad characters. Indeed, one great advantage of such legislation as that proposed would be to put a stop to the many vexatious and oppressive ways in which the Police harass unfortunate bad characters.

2. For I consider it essentially necessary that the Magistrate should have it in his power to decide who is to be under Police surveillance and who is not. At present the Police have absolute control over their registers of bad characters instead of its being under the control of the Magistrate, as I think it should be; but I understand that under the proposed legislation it would only be a Criminal Court which would have the power to direct that an offender be subject to the supervision of the Police for a certain period.

3. In my opinion a Magistrate of the 1st class should have it in his power, either on conviction (whether for the first or second time), without taking further evidence, or at any other time by a separate proceeding similar to those now held under Chapter VIII, to direct that on release or immediately the accused be placed *either* on security for good behaviour *or* under Police surveillance. I see that the period proposed for Police supervision in the first instance is seven years, and the periods for which security can now be demanded seem to me to be wholly inadequate. When a habitual burglar is put on security for a year, he very likely leaves his home for a year and pursues his career of crime elsewhere; or he waits impatiently till his year has expired and then begins to thieve again. I think that security should be taken in the first instance for one year, but that at the end of that year the criminal should have an opportunity of proving that he was leading an honest life. The burden of proof should lie on him, and if he cannot prove this, the security should be re-attested for another year, and so on *ad infinitum*, or at least for a number of years.

4. And the offences for which security could be demanded should be made to include serious cases of mischief, that is, cattle poisoning and rick burning.

5. The law should state clearly in what Police supervision consists, and the Police should not be allowed to harass habitual criminals in any other way, as for instance by collecting all in the neighbourhood whenever an offence is committed and detaining them at the spot or at the Police Station for several days.

From L. W. BROOME, Esq., District Superintendent of Police, Rawalpindi, to the Deputy Commissioner, Rawalpindi,—No. 71, dated the 12th—16th January 1888.

In returning your No. 15G., dated 4th January 1888, in original, I have the honour to report that some legislation is absolutely necessary to enable the Police to have some sort of power over non-convicted professional criminals. At present they have none, and the supposed Police surveillance over bad characters is a farce. I have long been of opinion that till the surveillance of habitual offenders by the Police is legalized, the prevention of crime—one of the duties of the Police—cannot be carried out. I would suggest that the law regarding convicted criminals should be altered so as to allow of Magistrates demanding security under Section 110, Criminal Procedure Code, on conviction of a second offence coming under Chapter XVII of the Indian Penal Code; the security to be furnished on the convict's release from jail. He would then come under Police supervision, for which, as I said before, some separate legislation is necessary. An Act might be passed, called the Habitual Criminals Act, and might in substance be somewhat similar to the Criminal Tribes Act, only more stringent, and should place the criminal in such a position that he will be held responsible for not reporting himself at stated periods to the local Police Officer, giving notice of change of address and getting a pass for absence from the boundary of his village, etc. An habitual offender being once convicted under Section 110, Criminal Procedure Code, would come under the operation of the Habitual Criminals Act. But besides this the District Superintendent of Police should have certain power under the Act to place persons under Police supervision without their being sent up under Section 110, Criminal Procedure Code. The most dangerous criminals are those who are never detected in committing offences; who go away to other districts and places by rail and commit offences unknown to the local Police or to the neighbourhood, at the same time their mode of living is suspected and known, but evidence to convict them under Section 110, Criminal Procedure Code, cannot be obtained, either through fear of the consequences or through the machinations of influential persons. It is notorious in this district that numbers of headmen and influential persons have bad characters in their service, and yet neither one nor the other can be touched. If one is entered in my No. 10, or Surveillance Register, there is the end of it, as it is absurd to suppose that he can be watched by the local Police in any effective way. Constables or other Police officers may go to his village once a month, and on occasions not as often as that, and report him present or absent. If the latter, no one knows where he has gone to. The professional criminal when sent up to be placed on security under Section 110, Criminal Procedure Code, does not mind it at all. Whatever the security demanded may be, it will be forthcoming. He is seldom, if ever, detected; and if detected will probably get off conviction by employing a Pleader.

Several bad characters in this district have had security taken from them four and five times, and are as bad as ever.

From H. E. PERKINS, Esq., Commissioner and Superintendent, Rawalpindi Division, to the Registrar, Chief Court, Punjab,—No. 3416, dated Murree, the 10th September 1883.

Revision of the Punjab Laws Act of 1872.

As I understand that a revision is proposed of the Punjab Laws Act of 1872, I have the honour to propose an addition which I have long wished to be added to the Statute Book, and without which the best efforts of our magistracy are often frustrated.

2. It is this: that in the case of persistent want of detection of the crimes of cattle-poisoning and rick-burning, the village, or if it be preferred, the Patwari's circle, where such undetected crime has gone on, may be ordered to pay the value of the destroyed property. Tracts within which this plan could be pursued to be previously gazetted by order of the Local Government.

3. In support of such a law, I beg leave to point to the marvellous effect which has just been produced in Ireland by such a measure against agrarian crime. I beg also to point out that it would be no more revolutionary than is the Punjab Khaj Law for fining villages into which tracks of thieves are carried; this valuable provision I see it is intended to retain. My proposal is strictly analogous. We should get public opinion on our side, and offenders would be detected, or more likely crimes would not occur. The provision in the Police Act, sanctioning the establishment of a punitive post in any ill-conducted village, is another analogous law.

4. The measure has been in former days tried with complete success, though unknown to Government, when Maulvi Hidayat Ali, now in charge of the Fazilka out-post, was Tahsildar of Batala. Many years ago, he suppressed cattle-poisoning and rick-burning altogether by the adoption of this very measure.

5. Both these crimes are nearly impossible to prove, and yet every one in the countryside knows who did them. They both destroy material wealth and cripple agricultural prosperity, already too heavily handicapped by our laws. Even theft does not do the same damage to the community, for stolen property remains in existence to benefit the community generally though it may be lost to the right owner.

6. These crimes are, I regret to say, generally supposed to be spreading owing to the encouragement given to them by the strictness of proof required in our Criminal Courts. No one can tell how many cases occur, as a complaint is often not made; the sufferer knowing that he has no chance of a conviction, submits to what he deems his destiny, or else, more often submits to the terrorism of the culprit, and refrains from pressing his rights, from speaking the truth in Court, from whatever else he learns to be contrary to his tyrant's will. If not this, then he enters on a course of reprisal. I knew a case in this district where the Lambardar of Burhan and his enemy in Chach poisoned each other's cattle undetected for a year or more, till each having lost from 30 to 40 head, and both being nearly ruined, their friends interposed, called a jirga and made peace between them, whereon the slaughter ceased.

7. If such a plan as I advocate were introduced, it should be under the same restrictions as the present tracking fines, *viz.*, with the previous sanction of the Commissioner, and subject to an appeal to the Chief Court. I earnestly ask that this suggestion may receive early consideration. It is the result of a long magisterial career and of careful enquiry as to how these dastardly crimes can possibly be controlled. If it has been found necessary in Ireland, how much more in India, where there is the same clannish aversion to get the greatest scoundrel into trouble, and the same fear of giving evidence lest ruin should fall on the witness, added to a lower order of intelligence and civilization than the Government had to deal with in Ireland.

From C. J. LYALL, Esq., C.I.E., Offg. Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Madras, to the Secretary to the Government of Bombay, Judl. Dept., to the Chief Secretaries to the Governments of Bengal and the North-Western Provinces and Oudh; to the Chief Commissioners of the Central Provinces, Burma, Assam, Coorg, and the Resident at Hyderabad,—Nos. 1—418-426, dated 31st May 1890.

I am (now*) directed (with* reference to paragraph 8/8/10/10/7 of my letter No. 396/397/398/377/400, dated 28th/28th/28th/17th/28th May 1890) to address the Government of Madras/the Government of Bombay, etc./you, on the subject of more stringent regulations for the control of habitual offenders in India. The inquiries recently made into the state of crime in the larger Provinces of India have shown very clearly that the improvements in communication, effected chiefly by railways and the telegraph, have greatly facilitated the operations of those criminals who are in the habit of leaving their homes to commit crimes at a distance and returning with their plunder. The Criminal Tribes Act affords, in the provinces in which it is in force, an effectual method of dealing with members of such tribes, but the Government of India believes that the number of professional criminals in India who do not belong to these tribes and cannot be reached by the law regarding them is not inconsiderable, and that their depredations are favoured by the want of cohesion between the Police of different provinces and between that of British India and Native States. The Governor General in Council could not entertain any proposal for dealing with this matter by centralizing power in the hands of an Imperial Police Department, but in the opinion of His Excellency in Council it will soon be necessary to do something to strengthen the hands of the Police, and, as at present advised, he is disposed to think that the best plan will be to give to those charged with the prevention and detection of crime some compensation for the facilities now afforded to the more adventurous criminals by the improvement in communications.

2. Apart from the deterrent effect of the enhanced punishment which can be awarded under Section 75 of the Indian Penal Code, the only provision now made by the law for the prevention of crime by habitual offenders is to be found in Chapter VIII of the Criminal Procedure Code, which authorises the taking of security for good behaviour. By Sections 505 and 506 of the Criminal Procedure Code of 1872, Magistrates were empowered to demand security from persons of notoriously bad livelihood or of a dangerous character. The amended Criminal Procedure Code circulated for opinion with the Legislative Department's letter Nos. 536—546, dated 14th May 1879, contained a section (109) making a similar provision for demanding security from any one who was by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or of a dangerous character. In the Bill subsequently circulated for opinion with the same Depart-

* Omitted in letters to the Chief Commissioners of Burma, Assam and Coorg and the Resident, Hyderabad.

ment's letter Nos. 9 C. to 19 C., dated 25th March 1881, the corresponding section (111) was altered, and the altered section was finally enacted as Section 110 of the existing Code. From this section the words which gave the Magistrate power to demand security from persons of notoriously bad livelihood or of a dangerous character have been omitted, the grounds given for their omission being that they were vague, and that the powers which they placed in the hands of the Police were liable to great abuse. When a person has been required to show cause why he should not give security for good behaviour, a formal enquiry follows before the Magistrate, and the people affected are often afraid to come forward and give evidence at this enquiry. The more dangerous the offender the greater will be the dread of incurring his resentment or that of his friends, and the Government of India has reason to believe that it is this apprehension which has been chiefly responsible for the failure of the law regarding security to operate as a control over habitual criminals. His Excellency in Council also fears from the information before him that the provisions of Section 75 of the Indian Penal Code have not been always used by the Courts in a manner calculated to deter habitual criminals from crime.

3. In 1873 a proposal was made that the Government of India should legislate on the model of 34 and 35 Vict., Cap. 112, for the prevention of crime by controlling bad characters. The proposal was, however, not then adopted because it was founded on a new provision of English law which had not been subjected to the test of experience, and because the Police of this country was not then considered fit to exercise such powers of supervision. But the reports which were received by the Government of India in 1881 in connection with the revision of the Code of Criminal Procedure, and those which have been recently before it in connection with the special enquiry into the present state of crime in different parts of India, show that many experienced officers consider surveillance over bad characters to be indispensable if the Police are to retain any check over habitual criminals, while the chief objections to the enactment of such a measure in India have been removed by the experience of the working of the Statute in England, and by the fact that steps have already been taken, while others are under contemplation, for improving the condition of, and raising the standard of intelligence and honesty among, the Police. Moreover, in most parts of India the provisions of the law are actually supplemented by the exercise of some form of supervision, and it is in the opinion of the Government of India desirable to place this surveillance upon a legal footing. The objections that exist to a *public* register of mere suspects have been stated by the Allahabad High Court in the case of Babu Lal and Dati Lal *versus* Horsford, quoted at page 42 of the 7th edition of Mr. Justice Prinsep's Code of Criminal Procedure. The Governor General in Council shares the views of the Allahabad High Court in the matter, and considers the maintenance of such a register, and also the system of having a roll-call of suspected characters, to be not only open to objection on principle but also ineffectual from the point of view of the Police. There are not, however, the same objections to a secret register being maintained for the information of the Police, and it seems expedient that domiciliary visits to ascertain if suspected characters, or at all events persons placed under Police supervision in due course of law, are at their homes should be legalized, and possibly that some other similar precautions should be taken to prevent excursions for the purpose of committing crime. The Government of India has already recognised the necessity for taking special measures with convicted criminals in the conditions which it has imposed on convicts released from the Andamans in accordance with the rules circulated with Home Department letter No. 1—13-22, dated the 11th January 1887, and the principle embodied in these orders might reasonably be extended to the treatment of habituals generally.

4. With these remarks I am directed to circulate a copy of a Bill upon the subject of surveillance of habitual offenders which has been submitted by the Punjab Government, with a copy of the letter from that Government explaining its proposals, and to request that the Government of India may be favoured with the views of His Excellency the Governor in Council / the views of His Honour the Lieut.-Govr. (and Chief Commr,) / your views upon the provisions contained in it regarding the control of habitual criminals, as well as the prevention of special acts of mischief, such as cattle-poisoning and arson. It appears to the Governor General in Council that the law on both points should be general and not confined to a particular province, and that the procedure of levying compensation from the inhabitants of a locality for losses caused by special acts of mischief can only be justified when there is a wide-spread conspiracy to commit or connive at outrages for the coercion, or punishment of classes of the community obnoxious to those who commit them. In such a case those who connive may fairly be required to contribute to make good the losses inflicted, while the effect on the more peaceable members of the community would merely be that they help to indemnify one another against such acts. But a provision of this nature would require to be applied with

great care and discrimination, and the danger of its operating unfairly is intensified in India. The Governor General in Council is, therefore, of opinion that such a power, if given at all, should be given generally and subject to careful conditions, such as those which regulate the power to impose punitive police. Upon the question of the necessity for such a provision and of the terms by which such a power should, if granted, be limited, His Excellency in
the advice of His Excellency in Council.
Council will be glad to receive the advice of His Honour.
your advice.

I am to add that the Bill must not be taken as embodying any conclusions which have been adopted by the Government of India. It is circulated just as it was received as a convenient method of eliciting the views of Local Governments upon the principle of proposals which have been laid before the Governor General in Council. Criticism is not called for as to the form in which those proposals are expressed.

5. With reference to what is said at the close of paragraph 2 of this letter, I am directed to enclose an extract (paragraph 27) from a report recently submitted to the Government of India by the Commissioners who visited the Penal Settlement of Port Blair with a view to examine the system in force there. It will be seen that the Commissioners bring to notice the comparatively small extent to which the provision of Section 75 of the Indian Penal Code, authorising the infliction of a sentence of transportation for life in the case of persons habitually guilty of offences against property, is resorted to, and point out that such a sentence is peculiarly appropriate in the case of such persons, for whom jail life in India appears to have no terrors, but who might possibly be reformed if subjected to wholly new influences such as would be brought to bear upon them in transportation. The convict under sentence of transportation for life in Port Blair has to serve a term of ten years as a labouring prisoner, in the course of which he can obtain by good conduct various privileges, and is liable for misbehaviour to have the term of his probation extended and to other punishments. If he has uniformly behaved well during this period, at the end of it he becomes a self-supporter, and is allowed to earn his own living by agriculture or service. An extract from the report (paragraph 3) gives a brief description of his condition in this stage of his punishment.

The Commission suggest that the advantages of a sentence of transportation for life in such cases might be brought to the notice of the judicial authorities, and that the officers responsible for prosecutions should pointedly draw the attention of the Courts to the inadequacy of short sentences of imprisonment in the case of habitual offenders. From the lists of such offenders under confinement in one province which he has seen, the Governor General in Council is disposed to think that such a course would be productive of some advantage. It appears to be the case, as the Commissioners state, that, especially in Presidency towns, habitual offenders are frequently sent to jail on short sentences of imprisonment, although their career shows clearly that such sentences have no deterrent effect upon them. If the Local Governments were to cause an examination to be made of the record of convictions against habitual offenders under confinement in their jails, and were to call for explanation where the sentences passed have been clearly inadequate, the effect would probably be beneficial.

6. In connection with this subject I am further to observe that there appears to be reason to think that many subordinate Courts before whom habitual offenders are brought for trial, when they discover the accused to have been previously convicted, too often abstain from committing him to the Court of Session, in order that he may receive an enhanced penalty as provided by law. When the Criminal Procedure Code was last under revision a suggestion was made by the Madras High Court, in a letter from which an extract is enclosed, that in cases which become cognizable by the Court of Session merely because the offender has been previously convicted and seems to be a habitual criminal, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence, in the same manner as a Magistrate of the 2nd or 3rd class now does when taking action under Section 349 of the Code. This suggestion commends itself to the Government of India, and I
the opinion of His Excellency in Council
am to ask for His Honour the Lieutenant-Governor and Chief Commissioner's opinion as to its adoption.
your opinion

7. The Governor General in Council desires me to state, with reference to the suggestion made in paragraph 3 of Home Department letter to the High Court, Calcutta, No. 400, dated 27th March 1885, that the Honourable Chief Justice and Judges have been addressed on the subject dealt with in the present communication.

No. 427.

Copy forwarded to the Government of the Punjab with reference to the letter from that Government, No. 577-S., dated 30th September 1889, for the information of the Lieutenant-

Governor, and with a request that the Government of India may be favoured with His Honour's opinion on the subjects discussed in paragraphs 5 and 6.

Extract, paragraph 27, of a letter from C. J. LYALL, Esq., C.I.E., Bengal Civil Service, and Surgeon-Major A. S. LETHBRIDGE, M.D., Inspector-General of Jails, Bengal, to the Secretary to the Government of India, Home Department,—dated Calcutta, the 26th April 1890.

We suggest for the consideration of Government that the attention of the judicial authorities in India might with much advantage be drawn to the special appropriateness of a sentence of transportation for life in the case of persons habitually addicted to offences against property (Section 75, Indian Penal Code). We have reason to believe that many Indian jails are at present crowded with such habitual offenders, especially in the neighbourhood of the chief centres of population. We have before us lists of such habitual criminals from the Central Jails in Bengal, which show that large number of persons, still in the prime of life, and presumably fit subjects for transportation, spend their existence between the Court-house and the jail. They are rarely at large for more than a few weeks before they find their way back to prison, and it is clear that confinement in our jails has no deterrent effect upon them whatever. The sentences passed upon them, possibly for want of knowledge of their previous career, are in no way graduated to the character which their repeated offences show to be theirs. We constantly find that a criminal who has just been released from a long term of imprisonment is on the next occasion when he is convicted sentenced to a short one, although Section 75 of the Penal Code recognizes that such incorrigible offenders should be punished with the utmost rigour of the law.

To show that we are not exaggerating, we quote a few instances drawn from several hundreds of which we have received particulars.

Shekh Mahbub alias *Chingi*—Now in the Presidency Jail, Calcutta, No. 5974. Present age 35.

1st conviction	2nd October	1869, for theft	. . .	6 months.
2nd ,,	3rd January	1871 ,,	. . .	2 days.
3rd ,,	24th February	1871 ,,	. . .	20 stripes and 3 months.
4th ,,	18th December	1871 ,,	. . .	6 months.
5th ,,	30th August	1872 ,,	. . .	6 ,,
6th ,,	24th December	1873 ,,	. . .	6 ,,
7th ,,	4th July	1874 ,,	. . .	6 ,,
8th ,,	13th July	1875 ,,	. . .	3 years.
9th ,,	30th November	1878 ,,	. . .	7 ,,
10th ,,	20th September	1886 ,,	. . .	1 year 6 months.
11th ,,	14th June	1889 ,,	. . .	2 years.

Tinkauri Shekh alias *Ghafur Ali*—Presidency Jail, No. 7743. Present age 28.

1st conviction	16th August	1872, theft in a building	6 months.
2nd ,,	6th September	1873 ,, ,,	15 days.
3rd ,,	4th December	1873 ,, ,,	10 stripes and 7 months.
4th ,,	18th May	1874 ,, ,,	1 month.
5th ,,	3rd November	1874 ,, ,,	6 months.
6th ,,	23rd October	1875, abetment of theft in a building.	1 year.
7th ,,	28th December	1877, theft in a building	2 years and 25 stripes.
8th ,,	21st January	1880 ,, ,,	2 ,, ,, ,,
9th ,,	5th December	1882 ,, ,,	6 years.
10th ,,	15th May	1889 ,, ,,	2 ,,

Nidhu Rám Madak—Presidency Jail, No. 7888. Present age 40.

1st conviction	5th November	1867, theft . . .	1 month.
2nd ,,	22nd August	1868 ,, . . .	6 months.
3rd ,,	22nd June	1869 ,, . . .	6 ,,
4th ,,	26th February	1870, loitering with intent	3 ,,
5th ,,	23rd June	1870, theft . . .	6 ,,
6th ,,	26th June	1872, sections 292 and 294, I. P. C.	3 days.
7th ,,	9th September	1872, theft . . .	3 months.
8th ,,	9th April	1873 ,, . . .	6 ,,
9th ,,	17th December	1873, loitering with intent	3 ,,
10th ,,	21st March	1876, theft . . .	7 years.
11th ,,	17th June	1889 ,, . . .	10 ,,

The above are selections from a list of 90 prisoners now in the Presidency Jail, every one of whom has been convicted at least four times of offences coming under Chapter XVII

of the Indian Penal Code and punishable with imprisonment of three years or upwards. The great majority of these prisoners are under 40 years of age, and have practically spent the whole of their life since reaching manhood, and many almost from childhood, in jail.

The following are from the Alipore jail :—

Kiná Ram Bairági—Jail No. 5767. Present age 41.

1st conviction	. 17th March	1873, theft in a building	.	. 1 month.
2nd „	. 8th August	1873 „ „	.	. 2 years.
3rd „	. 2nd May	1877 „ „	.	. 2 years and 15 stripes.
4th „	. 26th June	1880 „ „	.	. 2 years.
5th „	. 18th May	1886 „ „	.	. 1 month.
6th „	. 1st September	1887 „ „	.	. 7 years.

Pánchu Jogi—Jail No. 93. Present age 36.

1st conviction	. 8th May	1876, theft in a building	.	. 9 months.
2nd „	. 11th April	1878 „ „	.	. 18 „
3rd „	. 25th March	1880 „ „	.	. 2 years.
4th „	. 26th June	1882 bad livelihood	.	. 1 year.
5th „	. 23rd September	1884 „	.	. 3 years.
6th „	. 24th August	1889 theft in a building	.	. 5 „

Guláb, alias *Gulám*, alias *Abdul*—Jail No. 9429. Present age 42.

1st conviction	. 22nd December	1873, dishonestly receiving stolen property	. 2 years.
2nd „	. 14th October	1877, theft as a servant .	. 2 years and fine R6.
3rd „	. 26th August	1880, theft in a building .	. 2 years and 25 stripes.
4th „	. 28th November	1884, receiving stolen property	. 4 years.
5th „	. 12th February	1885, lurking and house trespass by night	. 2 „

Ram Kristo Dás—Jail No. 8499. Present age 35.

1st conviction	. 7th June	1875, theft	.	. 3 months.
2nd „	. 21st March	1877, house-breaking	.	. 1 year.
3rd „	. 6th July	1878 „ . .	.	. 18 months.
4th „	. 2nd August	1880, theft in a building	.	. 2 years and fine R20.
5th „	. 4th April	1883, house-breaking	.	. 5 years.
6th „	. 18th September	1888, theft in a building	.	. 7 „

There are over a hundred such habitual criminals in the Alipore Jail.

The following are from the Buxar Central Jail. The particulars of the offences have not been given by the Superintendent, but they are all under Chapter XVII of the Indian Penal Code. The age of the convicts is also not stated :—

Dukhi Dusád—Jail No. 926 B.

1st conviction	. 19th January	1873	. 6 months.
2nd „	. 20th July	1873	. 20 stripes.
3rd „	. 17th August	1873	. 6 months.
4th „	. 26th February	1874	. 6 „
5th „	. 4th June	1875	. 6 „
6th „	. 24th July	1876	. 2 years.
7th „	. 8th July	1884	. 6 „

Syed Ján—Jail No. 1243 B.

1st conviction	. 29th July	1879	. 1 year.
2nd „	. 8th July	1881	. 6 months.
3rd „	. 20th May	1882	. 20 stripes.
4th „	. 20th July	1882	. 3 years.
5th „	. 11th January	1886	. 5 „

Bhutan Dhanuk—Jail No. 1892 B.

1st conviction	. 22nd May	1876	. 1 month.
2nd „	. 19th February	1879	. 6 months.
3rd „	. 10th June	1882	. 2 years and 30 stripes.
4th „	. 8th September	1884	. 18 months.
5th „	. 26th January	1887	. 4 years.

Sewrám Kesira—Jail No. 3684 B.

1st conviction	. 12th July	1865	. 6 months.
2nd „	. 11th March	1873	. 5 stripes.

3rd conviction	. 11th March 1873	. 10 stripes.
4th "	. 27th December 1873	. 15 "
5th "	. 9th December 1875	. 6 months.
6th "	. 6th December 1881	. 5 years.
7th "	. 18th December 1882	. 6 months.
8th "	. 22nd April 1887	. 1 year.
9th "	. 1st June 1888	. 3 years.

The following are from the Dacca Central Jail:—

Rajmohan De—Jail No. 4619 B.

1st conviction	. 25th May 1879	. 3 months.
2nd "	. 30th June 1883	. 14 stripes.
3rd "	. 30th June 1883	. 1 month.
4th "	. 7th September 1883	. 2½ months and 20 stripes.
5th "	. 9th November 1886	. 1 month.
6th "	. 15th July 1889	. 3 months.
7th "	. 6th August 1889	. 2 years.

Iláhi Bakhsh—Jail No. 4792 B.

1st conviction	. 9th January 1880	. 25 stripes.
2nd "	. 5th June 1880	. 3 months.
3rd "	. 5th February 1881	. 1 month.
4th "	. 8th May 1883	. 8 months.
5th "	. 22nd May 1884	. 1 year.
6th "	. 8th June 1887	. 2 years.
7th "	. 16th September 1889	. 5 "

Ganesh Halwai—Jail No. 4800 B.

1st conviction	. 17th November 1874	. 3 months.
2nd "	. 20th April 1876	. 4 "
3rd "	. 13th August 1877	. 3 months and 15 stripes.
4th "	. 23rd April 1878	. 1 year.
5th "	. 1st November 1886	. 2 years.
6th "	. 30th August 1888	. 2½ "

The above examples might be multiplied indefinitely from the jails of Bengal, and we submit that they prove that sufficient use is not made of the provisions of Section 75 of the Indian Penal Code. This may perhaps be due to the fact that the prosecuting officers do not pointedly bring before the sentencing Courts the antecedents of the accused, or that the advantages of transportation as a reformatory form of punishment are not understood. We have explained at the beginning of this report how highly we rate the life and discipline at Port Blair as a reformatory agency, and it appears to us that there is no class of Indian criminals to which a life sentence of transportation is, both for the criminal's own sake and for that of society, more suitable. The successive sentences passed in jails show that prison life in India has no terrors for these persons; and their career of crime marks them out as incorrigible pests of society, against whom the community is entitled to protection by their permanent removal from its midst. In the Andamans they would be given a fresh chance in an entirely new sphere, where good conduct would be rewarded by the means of honest livelihood, with a good climate, a fertile soil, and a ready market for the fruits of their labour.

Extract, paragraph 8, of a letter from C. J. LYALL, Esq., C.I.E., Bengal Civil Service, and Surgeon-Major A. S. LETHBRIDGE, M.D., Inspector-General of Jails, Bengal, to the Secretary to the Government of India, Home Department,—dated Calcutta, the 26th April 1890.

In the discussions which have previously taken place as to the penal character of transportation in 1838, 1868, and in 1874, it has been admitted that it is impracticable, and not only impracticable but undesirable, to make labour in transportation as severe and penal in its nature as labour in jails in the prisoner's native country. The exile which the punishment involves is intended to be its most deterrent feature, and the object of the convict's life in the Penal Settlement should be to do that which, in our Indian jails, we have been obliged to renounce as impossible of attainment, *viz.*, to effect his reformation by removing him for a long period from the scene of his crimes and by placing before him the prospect of substantial advantages which he can earn by continued good conduct.

Our enquiries at Port Blair have convinced us that, with the large mass of transportation convicts under life sentences, this system of treatment has had the most beneficial effect. Of 12,549 convicts at the end of 1888-89, 9,093 were life-convicts. Of these 3,285 were self-

supporters, that is, they had attained the status almost of free persons within the Settlement, living a domestic life in their villages, cultivating the soil, and earning money by trade, service, or agriculture. To this condition well-conducted male convicts can attain after ten years of penal labour, that is, after half their term of exile has expired. We have seen many villages of these people, and had much talk with them; and from all we have heard, and the impressions we ourselves have gathered, it appears to us that the system yields the most satisfactory results in promoting the reformation of transported offenders. Crime among self-supporting convicts is extremely small; self-respect again asserts itself, and however bad their previous career may have been, the great majority of them appear to lead quiet, industrious, and creditable lives, which, when after the completion of their 20 or 25 years' exile they eventually return to India, must, we think, make them indisposed to relapse into a career of crime.

Extract, paragraphs 7, 8 and 9, from letter No. 2092, dated 27th July 1885, from the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to the Government of Madras.

7. With regard to the amendment in procedure which the High Court desires to see adopted, I am to say that, under Section 349, Criminal Procedure Code, a Magistrate of the second or third class can now convict of an offence cognizable by himself, even though the offender seems to deserve a more severe punishment than he is empowered to inflict, and may refer the case to the District or Divisional Magistrate to whom he is subordinate to pass sentence. All the reasons which induced the Legislature to make this provision apply, the High Court considers, with even greater force to those cases which become cognizable by the Court of Sessions merely because the offender has been previously convicted and seems to be an habitual criminal. The Sessions Divisions, I am to point out, are in this Presidency very large, and it entails a great hardship on the witnesses in cases of petty theft and the like that they should have to attend the Sessions simply because the accused is an old offender. The Court believes that this liability often leads to a failure of justice and the illegal compounding of offences.

8. In these circumstances, the High Court would suggest that the law should be so amended as to render it competent to a Magistrate to take cognizance of such cases and to enter up a conviction and refer the case to the Sessions Court for sentence, the Sessions Court being at liberty to make, or direct, such further enquiry as it thinks fit, and being bound to hear the offender. The High Court has reason to believe that such a provision would reduce the number of Sessions trials by about one-third.

9. Objection may be taken to the proposed amendment on the ground that persons tried at the sessions for theft or house-breaking have a right to be tried by a jury, and the tendency of recent legislation is in favour of extending the right of trial by jury: whereas the proposed amendment would operate to reduce the number of cases which would be tried by a jury, although the conviction, in the cases under discussion, would, on transfer to the Sessions Court, become a conviction of that Court. The High Court would meet this difficulty by enacting that the Magistrate, when reporting a case to the Court of Sessions for sentence, should always offer the accused the option of a committal for trial before the Sessions, and thus secure to him the right of trial by jury in all cases where such right now exists.

From C. J. LYALL, Esq., C.I.E., Offg. Secretary to the Government of India, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 1-428, dated Simla, the 31st May 1890.

I am directed to address the High Court on the subject of more stringent regulations for the control of habitual offenders in India. The inquiries recently made into the state of crime in the larger Provinces of India have shown very clearly that the improvements in communication, effected chiefly by railways and the telegraph, have greatly facilitated the operations of those criminals who are in the habit of leaving their homes to commit crimes at a distance and returning with their plunder. The Criminal Tribes Act affords, in the Provinces in which it is in force, an effectual method of dealing with members of such tribes, but the Government of India believes that the number of professional criminals in India who do not belong to these tribes and cannot be reached by the law regarding them is not inconsiderable, and that their depredations are favoured by the want of cohesion between the Police of different Provinces and between that of British India and Native States. The Governor General in Council could not entertain any proposal for dealing with this matter by centralizing power in the hands of an Imperial Police Department, but in the opinion of His Excellency in Council it will soon be necessary to do something to strengthen the hands of the Police, and, as at present advised,

he is disposed to think that the best plan will be to give to those charged with the prevention and detection of crime some compensation for the facilities now afforded to the more adventurous criminals by the improvement in communications.

2. Apart from the deterrent effect of the enhanced punishment which can be awarded under Section 75 of the Indian Penal Code, the only provision now made by the law for the prevention of crime by habitual offenders is to be found in Chapter VIII of the Criminal Procedure Code, which authorizes the taking of security for good behaviour. By Sections 505 and 506 of the Criminal Procedure Code of 1872, Magistrates were empowered to demand security from persons of notoriously bad livelihood or of a dangerous character. The amended Criminal Procedure Code forwarded for opinion with the Legislative Department's letter No. 535, dated 14th May 1879, contained a section (109) making a similar provision for demanding security from any one who was by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or of a dangerous character. In the Bill subsequently forwarded for opinion with the same Department's letter No. 20C., dated 25th March 1881, the corresponding section (111) was altered, and the altered section was finally enacted as Section 110 of the existing Code. From this section the words which gave the Magistrate power to demand security from persons of notoriously bad livelihood or of a dangerous character have been omitted, the grounds given for their omission being that they were vague, and that the powers which they placed in the hands of the Police were liable to great abuse. When a person has been required to show cause why he should not give security for good behaviour, a formal enquiry follows before the Magistrate, and the people affected are often afraid to come forward and give evidence at this enquiry. The more dangerous the offender the greater will be the dread of incurring his resentment or that of his friends, and the Government of India has reason to believe that it is this apprehension which has been chiefly responsible for the failure of the law regarding security to operate as a control over habitual criminals. His Excellency in Council also fears from the information before him that the provisions of Section 75 of the Indian Penal Code have not been always used by the Courts in a manner calculated to deter habitual criminals from crime.

3. In 1873 a proposal was made that the Government of India should legislate on the model of 34 and 35 Vict., Cap. 112, for prevention of crime by controlling bad characters. The proposal was, however, not then adopted because it was founded on a new provision of English law which had not been subject to the test of experience, and because the Police of this country was not then considered fit to exercise such powers of supervision. But the reports which were received by the Government of India in 1881 in connection with the revision of the Code of Criminal Procedure, and those which have been recently before it in connection with a special enquiry into the present state of crime in different parts of India, show that many experienced officers consider surveillance over bad characters to be indispensable if the Police are to retain any check over habitual criminals, while the chief objections to the enactment of such a measure in India have been removed by the experience of the working of the Statute in England, and by the fact that steps have already been taken, while others are under contemplation, for improving the condition of, and raising the standard of intelligence and honesty among, the Police. Moreover, in most parts of India the provisions of the law are actually supplemented by the exercise of some form of supervision, and it is in the opinion of the Government of India desirable to place this surveillance upon a legal footing. The objections that exist to a *public* register of mere suspects have been stated by the Allahabad High Court in the case of Babulal and Dati Lal *versus* Horsford quoted at page 42 of the 7th edition of Mr. Justice Prinsep's Code of Criminal Procedure. The Governor General in Council shares the views of the Allahabad High Court in the matter, and considers the maintenance of such a register, and also the system of having a roll-call of suspected characters, to be not only open to objection on principle but also ineffectual from the point of view of the Police. There are not, however, the same objections to a secret register being maintained for the information of the Police, and it seems expedient that domiciliary visits to ascertain if suspected characters, or at all events persons placed under Police supervision in due course of law, are at their homes should be legalized, and possibly that some other similar precautions should be taken to prevent excursions for the purpose of committing crime. The Government of India has already recognized the necessity for taking special measures with convicted criminals in the conditions which it has imposed on convicts released from the Andamans in accordance with the rules circulated to Local Governments and Administrations with Home Department letter* No. 1—13-22, dated the 11th January 1887, and

* Copy enclosed.

the principle embodied in these orders might reasonably be extended to the treatment of habituals generally.

4. With these remarks I am directed to forward a copy of a Bill upon the subject of surveillance of habitual offenders which has been submitted by the Punjab Government, with a copy of the letter from that Government explaining its proposals, and to request that the Government of India may be favoured with the views of the Honourable the Chief Justice and Judges of the High Court upon the provisions contained in it regarding the control of habitual criminals, as well as the prevention of special acts of mischief such as cattle poisoning and arson. It appears to the Governor General in Council that the law on both points should be general and not confined to a particular province, and that the procedure of levying compensation from the inhabitants of a locality for losses caused by special acts of mischief can only be justified when there is a wide-spread conspiracy to commit or connive at outrages for the coercion or punishment of classes of the community obnoxious to those who commit them. In such a case those who connive may fairly be required to contribute to make good the losses inflicted, while the effect on the more peaceable members of the community would merely be that they help to indemnify one another against such acts. But a provision of this nature would require to be applied with great care and discrimination, and the danger of its operating unfairly is intensified in India. The Governor General in Council is, therefore, of opinion that such a power, if given at all, should be given generally and subject to careful conditions, such as those which regulate the power to impose punitive police. Upon the question of the necessity for such a provision and of the terms by which such a power should, if granted, be limited, His Excellency in Council will be glad to receive the advice of the Honourable Judges.

I am to add that the Bill must not be taken as embodying any conclusions which have been adopted by the Government of India. It is forwarded just as it was received as a convenient method of eliciting the views of the Honourable the Chief Justice and Judges upon the principle of proposals which have been laid before the Governor General in Council. Criticism is not called for as to the form in which those proposals are expressed.

5. With reference to what is said at the close of paragraph 2 of this letter, I am directed to enclose an extract (paragraph 27) from a report recently submitted to the Government of India by the Commissioners who visited the Penal Settlement of Port Blair with a view to examine the system in force there. It will be seen that the Commissioners bring to notice the comparatively small extent to which the provision of Section 75 of the Indian Penal Code, authorising the infliction of a sentence of transportion for life in the case of persons habitually guilty of offences against property, is resorted to, and point out that such a sentence is peculiarly appropriate in the case of such persons, for whom jail life in India appears to have no terrors, but who might possibly be reformed if subjected to wholly new influences such as would be brought to bear upon them in transportation. The convict under sentence of transportation for life in Port Blair has to serve a term of ten years as a labouring prisoner, in the course of which he can obtain by good conduct various privileges, and is liable for misbehaviour to have the term of his probation extended and to other punishments. If he has uniformly behaved well during this period, at the end of it he becomes a self-supporter, and is allowed to earn his own living by agriculture or service. An extract from the Report (paragraph 3) gives a brief description of his condition in this stage of his punishment.

The Commission suggest that the advantages of a sentence of transportation for life in such cases might be brought to the notice of the judicial authorities, and that the officers responsible for prosecutions should pointedly draw the attention of the Courts to the inadequacy of short sentences of imprisonment in the case of habitual offenders. From the lists of such offenders under confinement in one province which he has seen, the Governor General in Council is disposed to think that such a course would be productive of some advantage. It appears to be the case, as the Commissioners state, that, especially in Presidency towns, habitual offenders are frequently sent to jail on short sentences of imprisonment, although their career shows clearly that such sentences have no deterrent effect upon them. It has been suggested to the Local Governments that if they were to cause an exaimination to be made of the record of convictions against habitual offenders under confinement in their jails, and were to call for explanation where the sentences passed have been clearly inadequate, the effect would probably be beneficial.

6. In connection with this subject I am further to observe that there appears to be reason to think that many Subordinate Courts before whom habitual offenders are brought for trial, when they discover the accused to have been previously convicted, too often abstain from committing him to the Court of Session in order that he may receive an enhanced penalty as pro-

vided by law. When the Criminal Procedure Code was last under revision a suggestion was made by the Madras High Court, in a letter from which an extract is enclosed, that in cases which become cognizable by the Court of Session merely because the offender has been previously convicted and seems to be a habitual criminal, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence, in the same manner as a Magistrate of the 2nd or 3rd class now does when taking action, under Section 349 of the Code. This suggestion commends itself to the Government of India, and I am to ask for the opinion of the Honourable the Chief Justice and Judges as to its adoption.

7. The Governor General in Council desires me to state, with reference to the suggestion made in paragraph 3 of Home Department letter No. 400, dated the 27th March 1885, that the Government of Bengal has been addressed on the subject dealt with in the present communication.

MADRAS.

From J. F. Price, Esq., Chief Secretary to the Government of Fort Saint George, to the Secretary to the Government of India, Home Department, (Police),—No. 1867 (Judicial), dated 22nd November 1890.

In reply to Mr. Lyall's letter, dated the 31st May 1890, No. 1—418, I am directed to place the Government of India in possession of the views of this Government upon the proposed Bill for the better control of habitual offenders, and at the same time to forward a copy of a Proceedings recording the replies received from the officers consulted. I am to state that His Excellency the Governor in Council thoroughly approves of the object of the Bill, and considers that legislation in the direction suggested is highly desirable, but is of opinion that in certain particulars, which are detailed below, the present form of the Bill is defective.

2. *Section 2.*—The words "whether the second offence was committed subsequently to the first conviction or not" occurring in the definition of "Habitual offender" seem unnecessarily harsh, and render the definition inconsistent with Section 75 of the Indian Penal Code; their elision, therefore, appears desirable.

3. *Section 3.*—This section authorizes a Court or Magistrate to pass an order of surveillance, and the power thus granted is apparently conferred upon all classes of Magistrates alike. His Excellency in Council is, however, of opinion that powers so large should be restricted to Magistrates of the first class, and that, where the Magistrate passing the order is not the District Magistrate, an appeal should lie to the District Magistrate. On the other hand, it appears desirable to give the High Court and District Magistrate power to pass an order of surveillance in cases where no such order has been made by a Subordinate Court convicting an habitual offender.

4. *Section 4.*—His Excellency the Governor in Council is strongly in favour of the amendment which this section would effect in the Code of Criminal Procedure, but the alteration should, perhaps, by preference be made in Sections 109 and 110 rather than in Section 123 of that Code.

5. *Section 5.*—The proposal to render liable to the Act habitual offenders who were released from transportation or imprisonment three years prior to the date upon which the Act may come into force, does not commend itself to this Government. The provision would supply the Police with a powerful engine of oppression, and, while the good done by rendering the Act, in a way, retrospective must be small, the evil resulting might be considerable.

6. *Section 6.*—Prior to considering the question of releasing an offender from an order of surveillance upon tender of security, it appears desirable that the Magistrate should communicate to the Police the fact that an application for release from such order has been made. I am to suggest that the necessary addition be made to this section.

7. *Section 8.*—The words "Section VI" occurring in this section should be "Section VII."

8. *Sections 10 and 11.*—His Excellency the Governor in Council is unable to approve the proposal to render owners and occupiers of land responsible for maintaining proper surveillance over habitual offenders; it appears enough to impose this duty upon village officers and servants, and even they should be rendered liable to punishment only in cases where they are unable to show any reasonable excuse for neglect to report the departure or bad behaviour of a person under surveillance. I am, therefore, to suggest that all allusion to owners and occupiers of land should be omitted from Section 10, and that Section 11 should be so amended as to render it clear that wilful neglect is alone punishable.

In this connection I am further to invite the attention of His Excellency the Governor General in Council to the difficulties which may arise in case of escape on the part of a person

under surveillance to foreign territory. It is open to question whether in such circumstances rendition could be demanded.

9. *Section 12.*—There is a general consensus of opinion among the officers consulted in regard to this Bill, that the taking of power to declare "Mischievous" areas is quite unnecessary so far as this Presidency is concerned. With this view His Excellency in Council agrees, but otherwise sees no objection to the proposed legislation. In any case clause (3) of section 12 will require some alteration to render it operative locally, and I am to suggest that the words "Local Government" be substituted for "Commissioner of the Division."

10. As regards the amendment of the Criminal Procedure Code to which allusion is made in paragraph 6 of the letter from the Government of India now under reply, I am directed to state that this Government approve generally of the proposal contained in paragraph 8 of the letter from the Madras High Court, dated 27th July 1885, No. 2092. His Excellency in Council is unable, however, to agree with the High Court in regard to the suggested proviso. To allow a prisoner *after* he has been charged with an offence to claim trial before a Sessions Court would entirely nullify the effect of the proposed amendment of the existing law, as practically every prisoner would claim transfer in such a case. In the opinion of this Government it is neither necessary nor desirable to allow any privilege of the kind in question; as Mr. Benson, one of the officers consulted, observes. "The jury merely tries the *fact* of guilt. They have nothing at all to say to the amount of punishment to be awarded . . . There is no logical reason why a man when he is charged for the first time with house-breaking by night should be allowed to have his guilt or innocence determined by a second-class Magistrate, but should, when he is charged with such an offence after half-a-dozen prior convictions, rise in dignity and be entitled to demand trial by a jury of his peers." At the utmost the prisoner should be given the privilege of choosing the Court by which he will be tried *before* he is charged.

In this connection I am to bring to the notice of His Excellency the Governor General in Council an important suggestion made by certain of the officers consulted. The comparative infrequency with which the provisions of Section 75 of the Indian Penal Code are enforced is probably to some extent due to the fact that, at the time of trial the Police are not ready with evidence of, or are not aware of the fact of, prior conviction. To remedy this it has been suggested that the Code of Criminal Procedure be so amended as to admit of the Police bringing forward evidence of previous conviction at any time prior to the expiration of a prisoner's sentence. The Court should then, it is proposed, have power to direct the production of the prisoner before it and pass upon him an additional sentence.

11. In conclusion, I am directed to state that His Excellency in Council is of opinion that no result commensurate with the labour involved would result from an enquiry such as that referred to at the close of paragraph 5 of the letter from the Government of India now under reply. But in regard to the remarks contained in the earlier part of the same paragraph, a copy of the Proceedings of this Government is forwarded, from which it will be seen that paragraphs 3 and 27 of the letter from Mr. Lyall and Surgeon-Major Lethbridge to the Secretary to the Government of India, Home Department, dated the 26th April 1890, have been communicated to the High Court and to all Sessions Judges for information.

Endorsed by the Government of Madras,—No. 1865, dated 22nd November 1890,

Copy to the Government of India, Home Department.

From G. D. IRVINE, Esq., Sessions Judge, Coimbatore, to the Chief Secretary to the Government of Madras Judicial Department,—No. 903, dated Coimbatore, the 2nd August 1890.

READ the following papers:—

As requested in G.O., dated 24th June 1890, No. 1074, Judicial, I have the honor to offer the following opinion on the proposed "Habitual Criminals Bill" and the remarks in the covering letter from the Government of India.

2. The *principle* of the Bill is, I believe, already recognised in the departmental working of the police in this Presidency. The only objections that I can see are those alluded to in paragraph 3 of the letter of the Government of India, and possibly they may be removed by the steps contemplated for the improvement of the police force, which are also alluded to therein.

3. I doubt whether it would be advisable, or even fair, to extend the responsibility properly imposed on village headmen and watchmen (by Section 10 *et seq.*) to *owners* and occupiers o

land (especially the former); unless when it appeared that there was connivance by the villagers, generally, in which case the further penal provisions of the Act might fairly be enforced.

4. Turning to the question of the best way of working Section 75 of the Indian Penal Code, I may observe that I believe the apparent neglect on the part of the subordinate magistracy is often due to the action of the police, who prefer getting a conviction, even with a short sentence, to running the greater risk of a trial by the Sessions Court.

5. As to the proposal of the Madras High Court to extend the provisions of Section 349, Criminal Procedure Code, it would certainly be a convenience to prosecutors and witnesses if cases of old offenders could be disposed of in this way. But the further suggestion to offer the accused the option of a committal would, I believe, nullify the result.

6. The option would almost always be exercised, for the habitual criminal is naturally anxious to postpone the evil day, and loves the excitement of a prolonged trial, with the chance (however remote) of escape at the end; while the innocent victim of a false charge knows that he has a better prospect of acquittal at Sessions, where the evidence is much more effectually sifted, than by an ordinary native Sub-Magistrate.

From J. H. SPRING BRANSON, Esq., Advocate General, to the Chief Secretary to the Government of Madras,—dated the 5th August 1890.

In compliance with the request contained in G. O., dated 24th June 1890, No. 1074, Judicial, I enclose my opinion on the draft Bill relating to the surveillance of habitual offenders.

Opinion of J. H. SPRING BRANSON, Esq., Advocate General.

I think that the principle of this Bill is right, and that it is absolutely necessary to make the surveillance and control of habitual offenders more effectual than it is at present. While protecting the public against such offenders, however, great care should be taken that the surveillance be not unnecessarily harsh. That care must be exercised when the rules are framed under the provisions of Section 7. Local Governments are necessarily the best judges of the requirements of the various districts under their control, and the different rules that are necessary therein to carry out the object of the Bill most effectually and with the least chance of police oppression.

2. Those rules must leave a great deal of discretion in the officials who have to carry them out, and should, therefore, limit the class empowered to act in certain cases. For example, Section 7 (*6*), gives power to frame rules for "the inspection of the residences of such persons (habitual offenders) and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property or to leave their place of residence without leave." An overzealous or an ignorant police constable might consider any box "a contrivance to conceal stolen property," and any bag a contrivance to enable the habitual offender to abscond. The power of inspection is a necessary one, but it must be used in a reasonable way, or it may become unduly oppressive, not only to the other "residents" in the house, but even to the man whose habitual misconduct necessitates the surveillance.

3. In the case of an habitual offender well known to his neighbours, it is not unreasonable that those neighbours should be required to give information regarding him when he so conducts himself as to give reasonable ground of suspicion against him; but, in the case of strangers to him, I do not understand how they are to know that he is an habitual offender, or how they are to know that he is "absent at night without leave," for example. A duty is cast upon "every village headman and village watchman" by Section 10 which they can hardly be expected to carry out unless indemnified; or which may lead to very grave oppression by them, if they have any spite to gratify, and are unconscientious and reckless enough to set the police in motion against an innocent man. The section casts a duty upon "every owner or occupier of land" to inform the police of the absence at night, and without leave, of an habitual offender under surveillance. Assuming that the owner or occupier of land referred to is "the owner or occupier of land on which such habitual offender resides," I fail to see why he should be convicted unless it is proved that he knew of such absence, and wilfully omitted to give information. Such proof is not likely to be often forthcoming. The temptation to prove such a case, however, might prove irresistible to the police, who are not generally credited with sufficient moral courage to resist such temptation.

4. Before Section 12 (*2*) can be put in force, I assume that the commission of the offence must be proved to the satisfaction of the "Magistrate of the District." I fear that, in the effort to put down the offences specified in the section, there will be great danger of simply substituting one form of crime for another. False accusations made to injure an enemy and to obtain compensation, or false charges of such offences against "some person or persons

unknown" to obtain money, will, I fear, become common substitutes for the offences now sought to be stamped out.

5. The subject matter of letter No. 2092, dated 27th July 1885, from the High Court of Judicature at Madras, to the Local Government, finds no place in the Bill under consideration, but I beg leave to point out that, if "the option of a committal for trial before the Sessions" be given to the accused, as suggested in paragraph 9, he will prefer to take his chance before a jury who know nothing of his antecedents before they give their verdict, to being tried, and almost certainly convicted, by a Magistrate who does know his character, and would be more than human if such knowledge did not to some extent affect his judgment adversely to the accused. Second and third class Magistrates are hardly likely to be able to exclude from their minds what they know of the accused or to ignore the statement blurted out by himself to account for his arrest, or by some police officer when giving evidence against him. I respectfully differ from the High Court in opinion upon this point. I think the "objection" referred to in paragraph 9 is well founded, and that the course suggested to meet that objection would practically defeat its own object.

From G. STOKES, Esq., Collector and District Magistrate of Salem, to the Chief Secretary to Government,—No. 1346M., dated Salem, the 9th August 1890.

I have the honor to submit my reply to G.O., dated 24th June 1890, No. 1074, Judicial. I shall first consider the proposed Bill and then advert to the points raised in the Government of India's letter.

2. I think that it is very desirable to apply the principle of the Bill to this country. It is, I think, the experience of all connected with the detection of crime that the organisation for the commission of certain classes of crime—notably house-breaking and theft—is every day becoming more developed and extended, and that every day more and more advantage is being taken of the increased facilities of modern locomotion by the predatory classes. Hence every day the law is being more and more placed at a disadvantage. I think that, to enable detection to cope with this growing evil, it is now essential that the preventive powers of the police should be increased. I therefore entirely approve of action in the direction suggested and of the principle of the proposed Bill. It is, however, not a new one in this Presidency, as it is, and has for years been, a very important part of the duty of a beat constable to ascertain the whereabouts of all known depredators or K. Ds., as habitual criminals are called in this Presidency, in his beat.

Granting, then, that it is necessary and desirable to place K. Ds. under surveillance, the first question is—What should be regarded as a K. D.? I think the definition in the Bill is needlessly wide in some respects and not wide enough in others. I do not think that the powers of the police to prevent offences under Chapter XII need any extension. Offences relating to coin are very rare in this part of the country, and in Chapter XII there are many offences which do not call for police surveillance. For example, the case of a man who, having unknowingly received a bad coin, knowingly gets a friend more clever than himself to pass it on—a not uncommon case. Similarly, it seems unnecessary to render liable to surveillance a man twice convicted under Section 430, Indian Penal Code. On the other hand, it seems to me that, as organised theft cannot go on without receivers who are at the bottom of the organisation, even one conviction for receiving stolen property should render an offender liable to surveillance. Convictions under Section 75, Indian Penal Code, are extremely rare for any offences except those involving theft, and even in these cases I think it is necessary to make a distinction. It seems to me unnecessary to subject to police surveillance a man convicted of stealing in the late famine who is again convicted 15 years after of stealing a cocoanut, or a juvenile offender who, hungry and naked, is convicted in different trials but at the same time, of stealing a handful of dholl and a cloth. I think, therefore, that the definition should be confined to offences individually specified, and should not be made conterminous with Section 75 of the Indian Penal Code. I think that for all specified offences the presumption may be raised alike that the offender is a habitual criminal after two convictions, if the power to declare who is to be regarded as an habitual offender be confined to the higher class of magistracy and be not entrusted to the Court or Magistrate convicting. If it be entrusted as proposed in Section 3, then the term which the inferior court should be authorized to inflict should not exceed their powers of imprisonment, and it will be necessary very largely to amplify and change the definition of "habitual criminal." If the law be enacted as proposed, in every case of conviction of an old offender, every petty police officer is sure to apply for an order of surveillance, which is almost as sure to be granted, with the result of such abuse of the system as may lead to its abolition or failure.

I see no objection to power being taken as proposed in Section 12 of the Bill. I have never known a case where it was necessary or desirable. As the power to apply the section is confined to the Local Government, I see no harm, however, in having it on the statute book.

If compensation is to be recovered, it should be assessed by the Collector and recovered as an arrear of revenue.

I turn now to the points raised in the letter of the Government of India.

As to paragraph 2, there is no doubt that the cause assigned by the Government of India contributes largely, not only to the failure of the sections in question, but to the whole administration of criminal justice, but I think the main difficulty arises in the case of Section 110 from the difficulty of proving the necessary elements of the section. It has been ruled that mere previous conviction alone is not sufficient to base action on (*in re* Haidar Ali, I. L. R. 12 Cal. 520), and a Magistrate applying the section is at once met by the question—What is an "habitual" offender? One of the main virtues of the proposed Bill is that it will supply a definition of this phrase. The difficulty is enhanced because at present the burden of proof under these sections lies on the prosecution (Regina *v.* Nurunjin Sing, 2 Allahabad H. C. R. 431, and Dunen *v.* Hem Chunder Chowdry, 12 W. R. Cr. 60), and I think that the hands of the police and magistracy would be much strengthened by declaring that, if any man is shown to come within that definition, the burden of showing that he is not an habitual offender should lie on him. In other words, that if it be shown that a man has been twice convicted of certain specified offences, on this fact being brought to the notice of the higher magistracy by the police, the man may at once be called on to furnish security or placed under police surveillance if he cannot show that he is not an habitual offender. It is the rulings of the courts throwing the burden of proof in these cases on the prosecution and requiring what is practically an impossible degree of proof and proof of what it is not possible to get proof of—*viz.*, what a man *intends* to do at some future period—that is the cause of the failure of the section (*in re* Haidar Ali, I. L. R. 12 Cal. 520, Empress *v.* Bahna, I. L. R. 6 All. 132, p. 136). In most instances the preparation for house-breaking merely means the meeting by night of the house-breakers at a toddy-shop, where it is determined what house shall be attacked.

With reference to paragraph 5, the whole course of modern decisions in this country is towards leniency and the whittling away of punishments. While I was Judge here, I sentenced a man against whom there were four convictions for house-breaking, and who was caught again house-breaking by night ten days after his release from jail, after working out a sentence of five years, to transportation for life, but the High Court reduced the sentence to five years, with the remark that the sentence was " out of all proportion to the offence." It seems to me that it is of no use bringing to the notice of the Judicial authorities the advantages of transportation, but that the better course would be to give the Local Government power to change a sentence of, say, five years' imprisonment and upwards into one of transportation in the case of habitual criminals.

In regard to paragraph 6, I am entirely in favor of the proposal. I think it would be highly desirable to give 2nd and 3rd class Magistrates the power of sending habitual offenders to the Sessions Court for enhanced punishment in the same manner as they do now under Section 349, Criminal Procedure Code, to the higher magistracy, and I can see no reason why a distinction should be made in this matter between the Sessions Court and the 1st class Magistrate; but I am further of opinion that, if the suggestion of the Madras High Court that the offender be given the option of a new trial before the Sessions Court be adopted, the law may as well remain as it is. The option will in every case be availed of.

From E. TURNER, Esq., District Magistrate, Madura, to the Chief Secretary to Government,—No. 45, dated Dindigul, the 9th August 1890.

I have the honor to submit the following report as required by G. O., dated 24th June 1890, No. 1074.

As District Magistrate of Madura, I am satisfied that some such Act as the one under report is a necessity. The provisions of the Code of Criminal Procedure under the heads of "Security to keep the peace" and "Good behaviour" have proved to be quite inadequate to check the growth of crime and free the people from the systematic depredations of the criminal classes.

2. This district is the head-quarters of two great criminal tribes, Maravar and Kallar. The former has its head-quarters in Ramnad and Sivaganga zemindaries, and the latter in the taluks of Melúr and Tirumangalam. But great numbers of both are also found scattered over the district, and in certain places, besides the two taluks above mentioned, whole villages are

occupied by them. They are also strongly represented in neighbouring districts, especially Maravars in Tinnevelly and Kallars in Trichinopoly and Tanjore. Nearly all the "grave crimes" and a great percentage of petty crime is committed by members of these two tribes. The Maravars, however, in this district are chiefly addicted to dacoity and crimes of violence, whereas the Kallars pervade the whole of society, commit innumerable petty crimes, extort "black-mail," and are a curse to the district. The prevailing crimes of this district are dacoity, robbery, theft, cattle-lifting, and incendiarism. Of these, the two latter prevail to a deplorable extent, and are the source of enormous losses to the unhappy inhabitants. *Cattle-lifting* is almost entirely carried on by Kallars, who are trained cattle-lifters from their youth up. Nearly every village in the district has its "Jellicut," the origin of which was, no doubt, training for cattle-lifting.

No cattle in the district belonging to either rich or poor are safe. There exists a regular system of stealing cattle and restoring the same on payment of a fee (Tuppu kuli) as explained in paragraph 3. Next to cattle-lifting *incendiarism* is very prevalent, and probably causes even greater losses. Most of the villages in thisdistrict consist of *thatched* houses, and at certain times of the year high winds prevail. The result is that accidental fires are very common. This is taken advantage of by persons who have a private or public grudge, by factions and by thieves. The losses so occasioned must be very great. Two years ago there was a sort of epidemic of incendiarism all over the district, but especially in the Ramnad zemindary. A great number of villages were burnt down and much property destroyed. Some of this was accidental, but mostly it was due to incendiarism, owing chiefly to violent factions between Shannars on one side and other castes, Maravars, Muhammadans, etc., on the other. Our criminal statistics show that *dacoity* on roads is still very rife in this district, and further that it is largely committed by the two criminal tribes aforesaid. The record of cases in this district shows that the Kallars, especially the Kallars of Tirumangalam, form themselves into gangs under experienced leaders, who are generally *old offenders*, and systematically plunder travellers on the roads, not only in this district, but in neighbouring districts.

3. There is a system in vogue in this district and in other districts, *viz.*, Trichinopoly, Tanjore, Tinnevelly, of demanding money for the protection of property commonly called "Kaval fees." This system prevails in every village in the district, and is responsible for a great part of the crime in it. By this means the Kallars have organised a system of "black-mail." They are the kavalgars who levy the fees. Every village has to keep a certain number of Kallar kavalgars, who are paid partly in grain and partly in money. Villagers pay in grain (Swatantrams), individuals in money. The system is as common in the towns as in the villages. In Madura, Dindigul, Sivaganga, Ramnad, etc., kavalgars are kept, each house pays 4 or 8 annas, while merchants and men of position keep a Kallar kavalgar in their pay. The kavalgars collect the fees openly, there is no secret about it. In some cases merchants and others execute regular agreements on paper, but these are kept secret. The heads of these kavalgars inhabit, for the most part, certain well-known Kallar villages, and are usually known depredators and *old offenders*. All the kavalgars are thieves. It is easy to see how such a system must encourage and foster crime of all sorts. Any village that does not pay its kaval fees regularly is liable to be burnt down. Any individual not keeping a kavalgar or not paying his fees regularly is worried in every possible way, his cattle are stolen, petty thefts of all kinds committed in his house, and, if that will not suffice, even graver crimes are committed to bring him to his senses. No one except the people themselves knows, and I believe few credit the amount of worry and loss entailed by this system. I will give a few instances. A well-known Barrister in Madura bought a pair of Mysore bulls. His bulls were stolen. He reported to the police with no result. He sent for the head kavalgar, who told him he must pay a fee of R20 for each bull and a fine of R50 for having appeared in court in a criminal case against certain Kallars. The fee and fine were paid and the bulls restored. A certain Tahsildar of Madura had made himself obnoxious to the Kallars; they broke into his house during his absence, stole his property and outraged his wife. In the case of another Tahsildar of Madura, they took the "tali" from his wife's neck when she was asleep. A certain Collector made himself disagreeable to the Kallars; so they cut off the heads of his ducks and placed them in a row on his door-step. Nearly every supervisor and overseer working on No. II Periyár project has had his bullocks stolen, and in every instance the animals had to be recovered by payment of kaval fees. The cases were never reported to the police. There was a heavy robbery in the Post Office at Madura a very short time ago. It is pretty well known who committed the offence; the head kavalgar scarcely made a secret of it. The police could do nothing. The Government Post Office now keeps a kavalgar. The same is the case with regard to the public bungalow in Madura. The Chairman of the Madura Municipality keeps a kavalgar; so do Sub-Judges, etc. Every toll gate-keeper and every pettah pays fees.

Dindigul is the same. Seven brothers are the kaval heads presiding over Dindigul, all are *old offenders* and known depredators. If such be the state of things in large towns like Madura and Dindigul and in the case of high Government officials, what must be the condition of remote villages and unprotected villagers?

4. The "kaval," system paralyses the police. People are afraid to complain. If they do, they will probably get no redress from the law but certainly annoyance and loss from the Kallar kavalgars. The system is pernicious in every way, and as long as it exists, crime can never be put down in Madura. If this system be done away with, criminals would soon find their occupation gone and take to agriculture and other harmless pursuits. As it is, the robbed actually pay the robbers to rob them.

5. In the foregoing paragraphs I have endeavoured to show (1) that crime of a certain kind is very rife in this district; (2) that it is committed by criminal tribes, many of whom are old convicts; (3) that owing to an organised system amongst these criminal tribes and to the weakness of the law as it now is, the police are much hampered, even paralysed. It follows that something must be done to strengthen the hands of the police and put a stop to this state of things.

6. No doubt, the draft Bill if applied to this district will be of great use in checking crime. It is most necessary that the police and magistracy should have the means of knowing how certain classes of criminals are conducting themselves after their release from jail. I therefore strongly advise that the whole of the Bill, as drafted for the Punjab from Sections 1 to 11, inclusive, be made applicable to this disrict. Sections 1 and 9 only will be of no use to us. The rules drawn up under Section 7 might be specially adapted to the requirements of this Presidency or such parts of it to which the special Act may be applied.

7. I cannot recommend Section 12. It would be impossible to work this section. It is however absolutely necessary to put a stop to "cattle-lifting" and "incendiarism." I would propose to enlarge the scope of the Bill and extend its provisions to surveillance over thieves, robbers, incendiaries, and other bad characters by repute. We must have some power to check lawless characters. Appeal should lie to the Divisional Magistrates, who should have the power to remove any name from the list of "suspects" on good cause shown. It may seem that this Bill will give great power to a corrupt police. If carefully worked and watched, however, I think the evil will not be great. At any rate, it would seem that almost anything is better than handing over the people to the mercy of habitual and cruel criminals.

8. I do not think the suggestions contained in paragraph 6 of the Government of India letter would be found of any practical use. Session Judges would not convict on evidence taken by a Magistrate. They would insist on re-trying every case sent up to them.

9. I have done the best I can to report on this Bill within the time allowed. It is, however, a very large subject, and is closely connected with the administration of Law and Police throughout this and many other districts; we want this enactment, but we want also more vigour instilled into both police and magistracy. Both want reforming. Magistrates, being both Revenue and Magisterial officers, are overworked. The lower orders of police are underpaid, their superiors are disheartened by the difficulty of obtaining convictions in our courts as now administered.

10. It seems to me, moreover, that the state of these large southern districts as regards crime and criminals is hardly realized by the highest authorities, otherwise it is difficult to understand such proceedings as the reduction of the sentence in the Hughes' dacoity case from 18 years to 10 years. The prisoners in that case admittedly committed a number of dacoities. They did their best to kill Mr. Hughes by beating him savagely even when on the ground. As a matter of fact, he was *very nearly* killed. Again, why should the irons be taken off the prisoners in Madura jail? I cannot understand it. Its effect, however, is certain—it will vastly encourage criminals, and discourage those who are trying to bring them to justice.

From G. W. FAWCETT, Esq., Acting Collector of Trichinopoly, to the Chief Secretary to Government,—dated Sogapuram, the 10th August 1890.

I have the honour to report on the subject of G. O. No. 1074, Judicial, dated 24th June 1890, referring for opinion certain proposals for the more effectual punishment and the better prevention of crime by habitual offenders.

The deterrent effect of imprisonment in our jails.

2. I have got figures from the Superintendent, Central Jail, Trichinopoly, showing previous convictions under Chapter XVII, Indian Penal Code, recorded against the convict population of the jail as it stood on the 2nd instant. The total convict population of the jail, as it stood on that date, was about 800—I have not got the exact figure. Of these, 263, or nearly

33 per cent., had at least one ascertained previous conviction recorded against them; and 113 of the 263, or over 14 per cent. of the whole convict population, were in for at least, their fourth conviction; six of these 113 being in for their ninth, one for his tenth, and two for their eleventh time. I notice, too, as the Bengal Commissioners noticed, that the time passed out of jail between two sentences was often very short; and it is probable, too, considering present facilities for travelling in Southern India and the difficulty of identifying prisoners in districts where they are not known, that many have undergone other punishments besides those on record in the jail against them. These figures, though not so strong as those quoted by the Bengal Commission in the Government Order, support the conclusion there arrived at, that confinement in our jails has little or no deterrent effect; and indeed it is a matter of general notoriety that the jail has no terrors for the criminal classes of this Presidency.

Whether our Courts take full advantage of Section 75, Indian Penal Code.

3. I consider also that the opinion that Section 75 of the Indian Penal Code is not taken full advantage of is true of this Presidency; and that it is true principally of the Sessions Courts.

To take the Magistracy first; old offenders rarely come before 1st class Magistrates, except under Section 349 of the Code of Criminal Procedure; and their practice in such cases is, I believe, to inflict the heaviest sentence in their power, *viz.*, two years' rigorous imprisonment, with perhaps fine or whipping in addition, where there is only one previous sentence, and that a light one; and otherwise to direct a committal to the Court of Session.

Second and third class Magistrates, again, would, no doubt, disregard Section 75 altogether if left to themselves; for the idea, borrowed by us from Roman law, that theft and other offences against property are offences concerning the whole community, and not merely the persons whose property is stolen, and that, therefore, a second offence deserves a heavier punishment than a first, is entirely foreign to the native mind; but, though cases do, no doubt, occur where Sub-Magistrates inflict light sentences for a second or third conviction such are, I think, on the whole, rare. Sub-Magistrates are generally well looked after; and, acting under instructions, as a rule send up offenders with one previous conviction to the Divisional or District Magistrate, under Section 349 of the Code of Criminal Procedure, and commit those with two or more to the Court of Session. Sentences passed by the magistracy do not therefore greatly affect the question.

There remain the Sessions Courts. The figures got from the Central Jail, referred to already, show that, as a rule, an offender, on re-conviction, gets from Sessions Courts a sentence of imprisonment only slightly longer than that inflicted on the previous occasion, *e.g.*, last sentence 4 years, present sentence 7 years; while in some cases he gets the same as before, or perhaps even less. The following are instances of this latter :—

Serial No.	Convict No.	Name.	Last Sentence.			Present Sentence.		
			Year.	Offence. Section of Indian Penal Code.	Period of sentence.	Year.	Offence. Section of Indian Penal Code.	Period of sentence.
1	7865	Vaitilinga Padayachi	1871	395	10 years' R. I.	1884	457 and 75	8 years' R. I.
2	8412	Linga Pandaram	1874	457 and 380	10 years' R. I. (second conviction).	1885	395 and 75	10 "
3	8837	Ramaswami Ambalagaram	1875	395 and 457	7 years' transportation and 4 years' R. I.	1886	* 379	6 "
4	9101	Ponnan	1878	395	7 years' R. I.	1887	379 and 75	3 "
5	9345	Muttukaruppen	1880	379	7 years' transportation.	1887	380 and 75	5 "
6	9350	Viran	1878	379 and 75	5 years' R. I. and 100 lashes.	1887	379 and 75	5 "
7	9538	Nagakudumban	1876	392	3 years' R. I.	1888	* 379	3 "
8	9547	Nachan	1881	457 and 380	6 years' R. I.	1888	* 379	6 "
9	9654	Appavu Mudali	1879	379 and 75	6 years' R. I.	1889	457 and 75	3 "
10	9781	Palani Padayachi	1872	not given	10 years' R. I.	1886	395 and 75	10 "
11	9889	Sivaguru Tevan	1874	402	5 years' R. I.	1888	457, 380 and 75.	4 "
12	669	Mukkupuri	1878	379	6 years' R. I.	1888	379	6 "
13	750	Krishnan	1878	457	10 years' R. I.	1889	379 and 75	4 "

* The Superintendent, Central Jail, does not give Section 75 in these cases, but the conviction must have been under Section 75, or 6 years could not have been awarded. In fact, the case would not have gone to the Sessions Court.

It will be seen that nearly all these convicts came back to the jail within a very short time of the expiry of their last sentence. There are only five prisoners in the jail under life sentences. To make the picture complete, I ought to have got statistics of prisoners sent to the Andamans in the last few years; I am a long way from head-quarters and cannot get them now, but the number is probably small. None, so far as I can remember, have been sent

in the last 19 months that I have been in the district. These figures prove completely that Section 75 is not *always*, or even *generally*, taken full advantage of by Sessions Courts committing to this jail; that inadequate sentences are *often* passed, and sentences of transportation *very seldom*.

Advisability of sentences of transportation.

4. I have thus come to the same conclusions as the Bengal Commissioners, *viz.*, (1) that our jails do not furnish a sufficient deterrent, and (2) that our Sessions Courts do not sentence to transportation as often as they might. It follows at once, from the first of these conclusions, that transportation should be made more use of as a punishment—and the fact that transportation, besides furnishing a more efficient deterrent, is also reformatory in its character, is largely in its favour—and, from the second, that Section 75, Indian Penal Code, should be amended so as to make a sentence of transportation compulsory in certain cases—say, where the offender has already two previous convictions against him, under either of which he has suffered rigorous imprisonment for a period exceeding two years.

Proposed surveillance of habitual offenders and the draft Bill so far as regards them.

5. With the objects of, and the reasons for, the Bill so far as regards habitual offenders as given in the Punjab Government letter I entirely agree. I have nothing to add to the reasons given by the Punjab Government and the Government of India. The account of the wandering of criminals and of the difficulty in tracing them, described as existing in the Punjab, is true also of this Presidency, or, at all events, of the southern districts. Habitual criminals, especially those of the Koravar, Daseri, and other wandering tribes, that go so largely to swell the number of habitual offenders in Southern India, travel and pass out of view when a district gets too hot for them; and once a man gets to a new locality, he starts afresh. Section 110 of the Code of Criminal Procedure is practically inoperative. I do not remember ever having had a case of the kind before me. It will, in my opinion, have a most wholesome effect, both as a deterrent punishment and as a preventive of crime, if a habitual offender, on release from jail, finds his place of residence prescribed and travelling prohibited without a pass; and I think a measure such as that proposed highly desirable. I do not fear the effect of giving the police increased power in this direction. As a matter of fact, as remarked by the Government of India, they keep up at present as much surveillance as they can—habitual offenders would have a clear field if they did not—and the proposed Bill will practically only prevent habitual offenders from escaping from that surveillance by moving to another district. I have little to say on the draft Bill as it stands. It appears to me an excellent Bill. I shall merely make a few remarks on certains sections.

Definition of habitual offender, section 2.

6. The words "whether the second offence was committed subsequently to the first conviction or not" should be omitted. A conviction under Section 75, Indian Penal Code, would not be sustainable unless the second offence was committed subsequent to conviction for the first.

Section 3.

7. I would fix a minimum of three, as well as a maximum of seven, years. Surveillance, for anything less than three years, would be practically useless. I would also give the District Magistrate and the High Court power to pass an order of surveillance, when he or it thinks fit, in cases where the convicting Magistrate or Sessions Court neglected to do it.

Section 6.

8. I do not much like this section. Surveillance, if properly worked, will, I think, show excellent results. Security would be useless. The reasons against taking security, given in paragraph 4 of the Punjab Government letter, appear to me to apply in this case also. Even when the sureties were respectable persons—which would seldom be the case—all the habitual offender would have to do would be to transfer the scene of his operations to some other district, where he would be safe. It must be remembered that Section 3 is not imperative, and that surveillance will be ordered only in cases where the offender is clearly a person against whom the community are entitled to protection. I cannot imagine any case in which such a person can be considered entitled to complain. If the section is to be retained, I would fix a minimum for the amount of security—say, two sureties in R500 for every year of surveillance ordered and not undergone.

Section 9.

9. To Section 9 I would add a provision that his extradition should be applied for, in case of his escape into French or Portuguese India, or into a Native State. There would, I imagine, be no difficultyin procuring the extradition.

Section 11.

10. I would make the sanction of the District Magistrate a necessary condition precedent to prosecutions of village headmen under this section. Cases might happen where the Village Munsif could not have known of the habitual offender's departure, and would not therefore really be to blame, though he would technically be guilty. I would make no alteration in the wording of the offence itself.

Section 21, arson and cattle-mischief.

11. There is no necessity for any such provision as this in this district, or, I believe, in any part of this Presidency.

The Madras Hgh Court's proposal to give Sessions Courts power to pass sentence, in cases sent up by Magistrates, in the same way that Divisional or District Magistrates now pass sentence under Section 349, Code of Criminal Procedure.

12. I consider the proposal an excellent one, but it would merely be a convenience to witnesses. It would have no effect in diminishing crime.

From COLONEL T. WELDON, Commissioner of Police, Madras, to the Chief Secretary to Government,—No. 78, dated the 12th August 1890.

I have the honour, in accordance with the G. O., dated 24th June 1890, No. 1074, Judicial, to submit the following remarks on the provisions of the Bill relative to the control of habitual criminals.

2. There can be no doubt of the advisability of legalising what all Magistrates and police officers recognise as a necessity, namely, a supervision of known criminals. It is attempted now with but indifferent success, for the police are frequently challenged for their authority for interfering with the so-called liberty of the subject. Here it is a common occurrence for a known depredator who intends to resume (his) practice to commence by taking the precaution of petitioning the Commissioner of Police to relieve him from the unwelcome attention of the police on the ground that he is a reformed character and is afraid that the police, not being equally satisfied on that point, will bring some charge or other against him. Then, when the evil day does come and he is caught at his old trade, if he finds the evidence too strong, he denounces it all as fabricated, and calls on the Commissioner to produce the petition in which he foretold his misfortunes. Some of the fraternity boldly defy the police, and worry them with counter-complaints of illegal interference and annoyance. The great advance made in extending facile communication with all parts of India is fully recognised and availed of by professional criminals, and if this Bill become law, it will prove a great blow to the pleasant and profitable little excursions now made to fairs and festivals. Here in the Presidency Town (Madras) the registration of criminals has been systematically carried out since 1870, the rule being that every person convicted of a second offence coming under Chapters XII and XVII, and therefore subject to the provisions of Section 75 of the Indian Penal Code, is registered as a known criminal and supposed to be placed under a more or less efficient surveillance. We have thus registered (in round numbers) 3,000. Of these there are—

In jail or transported	300
Left Madras	1,000
Not under surveillance	700
At large and supposed to be under surveillance	1,000
	3,000

The surveillance is not so efficient as it should be, partly owing to the want of distinct authority such as this Bill is intended to supply.

3. In Madras, as elsewhere, habitual offenders frequently escape with the comparatively light and inadequate sentences which a Magistrate is competent to award. The suggestion referred to in paragraph 6 of the letter from the Secretary to Government of India, Home Department, as having been made by the Madras High Court—namely, that in cases in which the offender appears to be an habitual criminal, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence—is, I submit, worthy of adoption, but I doubt if the further suggestion to obviate the objection which might be taken to such disposal of the case on the ground of a deprivation of a right (?) to be tried by a jury would either facilitate the despatch of business or tend to the public interest, for, if the offer of a trial before the Sessions is only to be made when the case has arrived at the stage of a reference for enhanced punishment, of course every experienced criminal will elect for the one chance more. He cannot possibly fare worse, he has all the chances of a possible acquittal owing to various influences which may be brought to bear, failure of memory on the part of witnesses or even their non-appearance, and, in any event, he will have the satisfaction of putting every one concerned in his prosecution to additional expense and inconvenience which may, as now, re-act on other cases liable to be committed for trial.

Act VIII of 1867 (Madras), Section 14.

"14. Whenever any person is charged, as aforesaid, before a Town Police Magistrate with any offence of a nature cognizable by the Magistrate of the district under the Code of Criminal Procedure, it shall be lawful for the Magistrate, when the case for the prosecution is closed, to ask the accused whether he is willing to allow the Magistrate to deal summarily with the charge; and, if the accused consents, the Magistrate shall record such consent in writing, and may thereupon proceed finally to dispose of the case, and may, in the event of a conviction, inflict the full amount of punishment which the Magistrate of the district would be authorised by law to impose for the offence. Provided always that, notwithstanding any such consent, it shall still be lawful for the Magistrate to commit the prisoner for trial before the High Court of Judicature at Madras, if, upon further consideration of the case, he shall think fit so to do."

4. As to the right of an old offender to be tried by a jury, I cannot see why he should be entitled, merely on the ground of his bad character, to any exceptional privilege. The main question would be—Did he commit the particular offence charged? And that would have to be determined altogether irrespective of his previous character. The proper punishment for the offence is not a question on which the convicted person is entitled to be consulted, but if he is to have a voice in the disposal of the case, his vote should be taken at the commencement of the proceedings, for which there is a precedent both in English practice and in Indian law (as noted on the margin) which was in force for some years but now repealed.

5. As to the Bill, the definition of "Habitual offender" meets the object, and the inclusion of habitual criminals either undergoing sentence when the Bill is passed, or released within three years previous thereto (Section 5), is proper and necessary.

6. *Section 6.*—When a person subject to surveillance makes an application to vary the terms of the original order, notice should be given to the police of such application and of the names and addresses of the persons proposed as sureties, with a view to cause, if any, being shown why the application should not be granted; otherwise a criminal who found surveillance hampered him might make an application unknown to the police to be relieved, and perhaps tender some receiver of stolen property as surety.

7. The question of compensation for malicious injuries is not likely to arise or require special treatment in the Presidency Town, but the provision may be useful elsewhere.

8. The facilities for travelling which now exist, coupled with the exceptional freedom enjoyed in British territories, bring many strangers, some of whom may prove dangerous. It may be worthy of consideration if the inquiries which are now required to be made regarding such persons should not be legalized also, and power given to the police to interrogate strangers. At present, information is at all times obtained with difficulty and sometimes refused point blank. Of course, the duty of making such inquiries would have to be discreetly performed and entrusted to selected officers. If the police had legal authority to make these necessary inquiries, they could do so with confidence that they were discharging a recognised duty, and the other persons concerned would equally recognise that duty.

From E. C. JOHNSON, Esq., District Magistrate, Ganjam, to the Chief Secretary to Government,—No. 5375, dated Chatrapur, the 4th August 1890.

I have the honour, as directed in G. O. No. 1074, Judicial, dated 24th June 1890, to state my opinion on the papers therewith circulated.

2. I see no reason why the whole of the provisions of the draft Bill "for the more effectual surveillance and control of habitual offenders" should not be made applicable to this Presidency; and I consider that they would strengthen the hands of the magistracy and police considerably. I should be inclined to suggest the omission of the words "and of every owner or occupier of land on which such a person resides" in the 1st and 3rd classes of Section 10, as it seems hard to impose such espionage on non-officials, though it may fairly be required of officials. In Section 12 it will be necessary to provide for confirmation of an order by some other officer than the Commissioner. As the power of issuing an order under this section could not well be entrusted to any officer of lower grade than District Magistrate, the power of confirmation would have to rest with the High Court.

3. I highly approve of the proposal to empower a Magistrate to record a conviction, and refer the case to the Sessions Court for sentence. I do not think that the fact that a person tried at Sessions for theft or house-breaking has a right to be tried by jury should be allowed to stand in the way; I fear that the course proposed by the High Court for meeting this difficulty, *viz.*, in all cases to give the accused the option of committal for trial, would render the proposed alteration of law altogether inoperative; for it is hardly conceivable that a criminal having his choice between an already determined conviction and a future trial should not prefer to take the chance of the latter. The Sessions Judge in deciding such a case should of course have all the powers now vesting in a District Magistrate under Section 349, Criminal Procedure Code. It would be necessary, moreover, to give the power of so referring to

Magistrates of all classes, or at least of the 1st and 2nd class. Magistrates of the lower grades will thus have, with reference to the gravity of the offence, to elect whether they would refer to their District Magistrate or to the Sessions Court.

4. While on this subject, I would suggest the advisability of extending some, if not all, of the provisions of the "Criminal Tribes" Act to this Presidency. We have in the Yerakala, Yanadi, Dumpa, Chentsu, Dommara, and other tribes habitual criminals who are responsible for a very large percentage of the petty crime registered, and whose movements might with advantage be under more control than they are at present. I recollect how the detention of one house-breaking by a gang of Yanadis in the Godávari district in 1881 led to the discovery of the fact that 27 other house-breakings and theft which had been registered were the work of the same gang.

From W. A. WILLOCK, Esq., Acting District Magistrate, Vizagapatam District, to the Chief Secretary to Government,—No. 2547, dated the 9th August 1890.

I have the honour to submit my reply to G.O. No. 1034, Judicial, dated 24th June, regarding the proposed Act for the surveillance of habitual offenders and the connected questions.

2. I consider that a measure of the sort would be a most valuable aid to the repression of the depredations of the criminal classes, but the proposed Bill seems to me to be somewhat harshly drafted. Much would of course depend on the rules under Section 7, and without having those before one it is difficult to express a decided opinion as to whether the general effect would be unduly severe, but I think that the extreme stringency of some of the sections is likely to produce an impression that the system which it introduces is intended to be worked with severity. It also appears to me that the time and money which the Police Department could devote to working the surveillance clauses is an important element to be considered, and that an act of applicability far in excess of what that department can effectively deal with would be a mistake. To be justifiable, surveillance should be effective, as otherwise evasions of the rules will be common and will be made a means of extortion in the hands of the local police. That that department will naturally desire and contend for the fullest powers and fullest applicability which the Act will allow of is certain, and the only way of ensuring that it will not be over-applied will be to restrict its sphere of action *ab initio*. I feel inclined, therefore, to think that the definition of habitual offender should be more restricted.

3. *Section 2.*—This section seems to me to go too far. It is hardly equitable to subject a man to such surveillance until he has shown at least once that a criminal sentence will not suffice to deter him from further crime.

4. *Section 3.*—The power conferred by this section is one which should only be entrusted to a 1st class Magistrate in my opinion. The order imposing surveillance should be perfectly free from all suspicion of having been obtained from the Court by the influence of the local police.

5. *Section 4.*—A reference to Sections 109 and 110 of the Criminal Procedure Code would be preferable to that to Section 123, which includes cases relating to security to keep the peace. This of course is a different thing from security for good behaviour, but the change would be again in precision of language.

6. *Section 5.*—This also seems to me to be a harsh section, particularly as regards men already released. If it be retained, I think it should only be applicable to persons who have been convicted on several occasions, say men who have four or more convictions standing against them.

7. *Section 6.*—So far as I can see, the Act contains no provision for the cancellation of suspension of an order once passed. In view of the long time which such an order may cover, I think that the District Magistrate should have power to cancel or suspend it at any time. Of course Section 6 allows of this being done indirectly by security being taken at the request of the offender, but I think the power of direct cancellation would often be useful. It would generally be exercised at the request of the police themselves. The meaning of the words "cancelled in accordance with law" is not clear. The Code does not provide for such cancellation.

8. *Section 7 (2).*—The word *reside* seems capable of improvement. From the following clause it would appear that the limits are intended to be ones beyond which the person is not to pass at any time.

9. Power to make rules that such persons are not to enter within certain limits would be very useful, particularly in Railway districts, where it could be used to prevent bad characters from using the railway without leave and exclude known railway thieves. It might form a minor kind of surveillance, and would be of great help to the Railway police and at large fairs

and festivals. It will be impossible for the police of this Presidency to exercise full surveillance over all the persons who might with advantage be subjected to it, and the power to keep the minor members of the dangerous classes out of places affording peculiar facilities for their trade would be valuable.

10. *Section 10.*—This section presses unreasonably heavily on village officers, and I doubt the legality of requiring all owners and occupiers of land to act as prescribed, in this Presidency at any rate. The provision regarding giving information about association with persons of evil repute and ceasing to labour are particularly oppressive. This section as it now stands would enable the police to shift the weight of working the Act on the village officers to the detriment of their proper duties, and would afford a ready means of extortion. This clause throws a new and onerous duty on a vast number of hard-working, honest men, and renders them liable to a severe criminal penalty even for unintentional neglect of its provision which appears to me to be a very unwise and inequitable proceeding.

11. *Section 11.*—With regard to the remarks made on the preceding section, I beg to call attention to the omission of the word "knowingly" between "shall" and "fail."

12. *Section 12* seems designed to meet a state of affairs unknown in this Presidency. It might be amended so as to meet one of our most pressing needs also, and afford a means of holding the criminal castes, such as the Karavars and Nallars of the south and the Dombs of the Vizagapatam Agency, responsible for offences almost invariably committed with their full connivance and with the universal approbation and aid, if necessary, of all their members. So much is this the case in Jeypore that were it not for the stupidity and treachery of these Dombs, the police would be almost powerless. I would like to see some power of levying compensation for loss by cattle theft from these criminal castes provided, partly because it is the form which is most exclusively adopted by their members, and partly because it is that, which inflicts the greatest injury on the victims. To the ryot his cattle are a necessity of life, while his jewels and other valuables are mere luxuries.

13. *Section 12.*—This section should be modified so as to allow of compensation for a number of offences being lumped together and levied periodically as might be convenient in localities where cases are numerous.

14. With regard to paragraph 5 of the letter of the Government of India, commenting on the inadequate sentences usually passed on habitual offenders and the suitability of transportation for life as a punishment in such cases, I have the honour to state that I think that the tendency to inflict comparatively light sentences remarked on is largely due to a desire to avoid imposing on Government the cost of lengthy sentences of imprisonment in cases in which the offences are of trifling importance in themselves, and that the views of the Government of India on the pecuniary aspect of the matter have only to be made known to produce a very marked change. The fact that the true habitual offender will probably be maintained at the cost of Government during as much of his life under long as under short sentences occurs to few Magistrates. There is also a natural disinclination on the part of courts to condemn fellowmen to long periods of imprisonment for offences which are of themselves of trifling importance. This is a failing which I think most people sympathise with, and the knowledge of which I believe to be one of the greatest inducements to criminals to continue in their evil courses. The less assured a man's position is the more influenced he is by chances, and while the habitual offender has first the possibility of escaping altogether and then that of getting off with a light sentence to fall back on, the inducements to persist in a course of crime will be to him very great. One of the principal causes why criminal sentences do not exercise a really deterrent effect is their uncertainty in each case till judgment is actually given. This uncertainty might be removed in dealing with habitual offenders by empowering a court convicting one to declare when passing sentence what (subject to exceptional circumstances) should be the punishment for the next offence of the same description. Were this allowable, the prisoner's views regarding his future when released from jail would be most materially altered. The most hardened criminal would pause before he again made himself liable to the clutches of the law if he was absolutely certain that the punishment for his next offence, however petty, would be transportation for life or for a long term of imprisonment opened by a severe flogging.

From R. S. BENSON, Esq., Sessions Judge of South Arcot, to the Chief Secretary to Government,—No. 73, dated Cuddalore, the 11th August 1890.

I have the honour to submit the report called for in G. O. No. 1074, Judicial, dated 24th June 1890.

2. The proposed legislation deals with—

(1) the surveillance of habitual criminals;
(2) the extension and improvement of the law regarding security for good behaviour; and
(3) the repression of mischief by the assessment of compensation on localities where it commonly occurs.

3. The provisions of the draft Bill are, in my opinion, well adapted to the ends in view.

4. There can be no doubt that dacoits and house-breakers avail themselves of the facilities afforded by railway communication to carry on their business at almost simultaneous times in localities far apart and at a distance from their own homes. A recent remarkable instance of this was the series of dacoities, in one of which Mr. Hughes, the Executive Engineer of Madura, suffered. The only hope of dealing effectively with such gangs is by a system of surveillance, which, in the case of notorious leaders, might be developed into persistent "shadowing." Under the old customary law, in this part of India, it was, at one time, the practice to compel all the suspects and bad characters of a village to sleep at the village choultry, under the eye of the village watchman. The plan was effective so long as the village officials were honest, but, not infrequently, the gangs were their servants, and they connived at the commission of offences, in the profits of which they shared. The procedure, however, was without legal warrant, and, with the introduction of codes and the definition of legal authority, the "general powers," both of the regular and of the Village Magistrate, gradually vanished. It is true that in villages where there are colonies of tribes or castes, such as Koravars, Irulars and Dombers, addicted to crime, an energetic Village Magistrate often, even still, exercises some part of his traditional authority, and sends round his watchmen, especially on dark and stormy nights, to visit the houses of the suspected persons and ascertain whether the males are at home or not. An instance of the kind came before me about a year ago in this district, and the absence of the men from their homes on the night of the dacoity being thus known, led to the arrest and ultimate conviction of the gang. There is, however, no organised system, and the village authorities have no legal warrant for the procedure in case the suspects prove recalcitrant.

5. I have used the term "suspects" for convenience, but I think the law should apply only to persons formally placed under police surveillance in due course of law, and the register should be strictly confidential. The system must, however, extend to the villages, and be worked, not by the regular police alone, but also by the Village Magistrate and his watchmen.

6. The existing provisions of the code regarding the giving of security for good behaviour are but little use, and are ineffectual as regards habitual offenders. The causes which are said to operate in the Punjab operate here with no less force, and there is a natural and proper reluctance to cast men, who are unconvicted, into prison. There will be no reluctance to subject to surveillance men whose antecedents show that such a measure is advisable for the protection of the community. I think the principle involved in Section 4 of the draft Bill is, from this point of view, a most valuable one.

7. The principle involved in Section 5 must also be adopted in order to bring the whole body of habitual criminals under surveillance within a reasonable time. I think, however, that the period of *three* years proposed is too short. It will operate to protect every "habitual" who has been so skilful or so fortunate as to escape conviction during that length of time prior to the introduction of the Act. I would extend the term to *seven* years. I do not think there is any risk of the provision operating harshly in the case of men who have abandoned their career of crime. The order of surveillance must be made by a District Magistrate, or by a Sub-Divisional Magistrate specially empowered. The discretion of such Magistrates may well be trusted. I would, however, provide that the Magistrate, before making such order, should be bound to hear the person affected, if he desires to show cause why the order should not be passed.

8. In other respects I think the proposals embodied in the first eleven sections of the draft Bill are excellent, and will greatly strengthen the hands of those charged with the prevention and detection of crime.

9. As a judicial officer, however, I am specially bound to consider how far the powers proposed can safely be given without risk to the liberties of the subject. I am of opinion that the safeguards are sufficient, and that the opportunities for oppression which corrupt police officers already possess, and, I fear, must always possess, will not be materially increased by the proposed legislation.

10. As regards Section 12 of the draft Bill, which has for its object the prevention of mischief by the levy of compensation on the locality where the crime is prevalent, I am of opinion that the proposed legislation is unnecessary, at least in this part of India. Cattle-poisoning was very rife in the Ceded Districts when I served there in 1876—78, but the offences were all committed by chucklers for the sake of gain. They would be untouched by the levy of compensation, for they are generally men of no means. The fact that a man could obtain compensation from the local or governmental authorities would, in my opinion, operate powerfully to diminish his interest in taking precautionary measures to protect his property, and would thus lead to an extension of the evil it was intended to check. The burning of straw ricks and houses is, so far as my experience goes, hardly ever organised on an extensive scale. It is usually the result of individual enmity, or of enmity between two factions in the same village. Such factions are rarely capable of such definition as would be essential in order to lay the burden of compensation on the right shoulders. It is possible that these provisions might be found of use in dealing with agrarian crime in Malabar, but my knowledge of that district is too small to justify me in offering any opinion. Elsewhere in this Presidency I should say that the legislation is unnecessary and therefore inexpedient. If it is considered necessary, the terms are, I think, unobjectionable.

11. The suggestion of the Madras High Court that in cases which are now committed to the Court of Sessions merely because the offender has been previously convicted and seems to be an habitual criminal, the Magistrate should himself try the case and enter up a conviction, merely referring the case to the Court of Sessions for an adequate sentence (as in cases where action is taken under Section 349, Criminal Procedure Code), has my entire support, except that I would make the conviction subject to the confirmation of the Court of Sessions. Offences of the kind referred to are often, in this Presidency, committed at a distance of 80 or 90 miles from the Court of Sessions. If the criminals are not old offenders they are tried without inconvenience to the witnesses by the local Magistrate, but if they are old offenders, the witnesses, after attending the local enquiry, have to leave their families and occupations and undertake an expedition, which may last a month, to the Court of Sessions. Even if the prisoner confesses his crime or makes no defence, the witnesses have still to attend the court, for he may retract his confession at the trial, and their evidence may be required to prove the offence. If the confession is adhered to, the witnesses have had their journey to absolutely no purpose. Such a case occurred at my last Sessions.

12. I do not, however, approve of the further suggestion of the High Court, in paragraph 9 of their letter, that the Magistrate should always offer the accused the option of being committed to the Sessions, and thus secure him the right of trial by jury in all cases where the right now exists. There is, *ex hypothesi*, nothing in the nature of the offence itself which renders it specially suitable for trial by a jury rather than by a Magistrate. The jury merely try the *fact* of guilt. They have nothing at all to say as to the amount of punishment to be awarded. That is a matter of law, and is for the Judge alone. The case is committed to the Sessions, not in order to have a more careful trial of the facts, but in order that the greater latitude allowed as to punishment may be exercised by a more experienced tribunal. There is no logical reason why a man, when he is charged for the first time with house-breaking by night, should be liable to have his guilt or innocence determined by a 2nd class Magistrate, but should, when he is charged with such an offence after half a dozen previous convictions, rise in dignity and be entitled to demand trial by a jury of his peers. If the Court of Sessions has the power to make, or direct, further inquiry, and is bound to hear the offender, and has also the power to review the evidence, and, if necessary, acquit the prisoner, the procedure will resemble that now in vogue when sentences of death passed by the Court of Sessions are referred to the High Court for confirmation, and every reasonable precaution will have been taken to prevent improper convictions.

13. As regards the advantages of sentences of transportation in the case of habitual criminals, I have long held decided views in accordance with those advocated in the papers under discussion, and I have endeavoured to give effect to them as opportunity offered. The High Court, however, as at present constituted, is opposed to this form of punishment except in case of extreme aggravation. The Sessions Judges are bound to subordinate their own views of the most appropriate punishment to what they understand to be in accordance with the views of the superior court, and this probably accounts for the diminished number of cases in which this punishment has been imposed in recent years. Nothing but good can, I think, result from making more widely known among judicial officers the advantages of transportation as a punishment of a reformatory character.

vantages, and inevitably some of the disadvantages, of civilization are constantly and rapidly increasing.

3. With regard to the provisions of the Bill itself, I think that a definition of an "habitual offender" is very necessary. So far as my experience goes, there is the greatest diversity of opinion on the subject, and a Magistrate is frequently placed in a dilemma owing to contradictory opinions, expressed or implied, by the courts superior to him. When a Magistrate is told, as he sometimes undoubtedly is, that a committal was indiscreet, although the offender had been already convicted four or five times, he is not likely to expose himself to a similar reprimand again, and this fact may tend to explain the reluctance occasionally evinced on the point and noticed by the Government of India in paragraph 6 of its letter.

4. But, at the same time, I would submit that the definition given in Section 2 of the Bill is too wide, because it would include the pettiest offenders against property, whereas it would appear from paragraph 5 of the letter from the Under-Secretary to the Punjab Government that the repression of "the more serious crimes against property" is intended. It will be observed that by Section 8 of the Prevention of Crimes Act (34 and 35 Vict., c. 112) the person who commits a crime under the Act is liable to the penalties provided therein, but by Section 20 a distinction is drawn between a "crime" and an "offence" both in England and Ireland and in Scotland. Hence a person may commit certain offences against property; for instance, theft of a dog (24 and 25 Vict., c. 96, section 18) in England and Ireland and theft not punishable with penal servitude in Scotland—and yet escape the operation of the Act. Dog-stealing, from the owner's point of view, is probably a grave offence, but, on the whole, it would appear that the intention of the Legislature in passing the enactment on which the present Bill is founded was to provide against the "more serious crimes" only. This intention was maintained in Sction 75, Indian Penal Code, which is applicable only to offences punishable with imprisonment for a term of three years or upwards, and thus it will be seen that the Bill goes far beyond the existing law both in India and in England.

5. It is not very uncommon in this country for persons to be convicted by Magistrates of thefts which are within the cognizance of the heads of villages, and I am therefore of opinion that, unless the proposed definition is modified, individuals who were never contemplated will be prematurely branded with infamy and driven into the ranks of habitual offenders. It does not appear to me that the classification of crimes according to the English Statute is practicable or necessary in India, but it is obviously expedient to frame a measure sufficiently rigorous to impose an efficient check on habitual and organised crime, but not so drastic as to force into the class of "known depredators" persons who may still be susceptible of reformation.

6. With this object in view I would suggest, in the first place, that the distinction maintained in Section 75, Indian Penal Code, should be preserved, and, in the second, that two substantial sentences of imprisonment should form the preliminaries necessary for declaring any person to be an habitual offender. I would not take pecuniary punishment by itself into account, because I do not think that a mere fine would necessarily indicate a serious offence or an incorrigible offender, and I would also exclude the punishment of whipping from consideration, because "it is a matter of fancy upon which no two men will agree." Hence I would define an habitual offender to be "a person who has been convicted on two or more occasions of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment of either description for a term of three years or upwards, and who has, upon each such conviction, been punished with imprisonment of either description for a term of not less than six months."

7. It may be remarked that there is a great difference between the standard of punishment I propose and the amount which the head of a village is competent to award, and that sentences passed by Magistrates are frequently inadequate. My answer would be that the inadequacy of punishments inflicted by Subordinate Magistrates is a matter of administration for which the District Magistrate is responsible, that if an individual has been repeatedly convicted of petty offences and sentenced to trivial terms of imprisonment, the previous convictions can still be proved and taken into consideration in the sentence passed for a subsequent offence, and that the standard suggested affords a certain guarantee of the culpability of the offender. When a Magistrate of the 2nd class, who is generally an officer of experience, uses his full powers of imprisonment, the presumption is that a substantially serious offence has been committed, and if through the indiscretion of the court a confirmed rogue escapes being brought within the operation of the new law, this is, in my opinion, a lesser evil than that of swelling the number of habitual offenders by including in it every boy who is twice convicted of stealing a cocoanut or a handful of rice.

8. On the other hand, while dealing with this subject, I would suggest, for consideration, the question of fixing a minimum of punishment for really habitual offenders. The Government of India has in paragraph 5 of its letter animadverted on "the comparatively small extent to which the provisions of Section 75 of the Indian Penal Code......is resorted to," and I think there is little doubt that the instances quoted by the Commissioners who visited Port Blair might be multiplied indefinitely. This leniency appears to me to be the root of habitual crime, and the proposal which I now venture to make is not altogether unprecedented, because it is provided by Section 2 of 27 and 28 Vict., c. 47, that when any person shall on indictment be convicted of any crime or offence punishable with penal servitude after having been previously convicted of felony, or in Scotland of any crime, *the least sentence of penal servitude* that can be awarded in such a case shall be a period of seven years, whereas in other cases the minimum is five years. It is true that the amount of imprisonment is left to the discretion of the court, but under the English law the maximum term of imprisonment for any one offence is two years, and the conditions under which the sentence is carried out render it infinitely more severe than is imprisonment in an Indian jail. Hence there appears to be no reason why in the cases now in point a minimum of imprisonment should not be defined as well as a minimum of penal servitude. If it was found necessary by the Legislature in England to issue such an absolute direction for punishment as is contained in the statute referred to above, then it seems to me that the necessity exists with equal, if not greater, force in India. The question is one which I must necessarily approach with diffidence, but I would suggest an amendment of the law by enacting that the least sentence of imprisonment that can be awarded in the case of an offender, who has already been twice imprisoned for terms of six months, shall be a period of two years, and that the least punishment which can be awarded to an habitual offender who has already undergone sentence of imprisonment for two years, shall be transportation for not less than seven years.

9. If any such measures were adopted, it is clear that the latter class of habitual offenders can be tried by a Sessions Court only, unless the procedure indicated by the Madras High Court and referred to by the Government of India in paragraph 6 of its letter be followed. Whether the suggestion I have made meet with approval or not, I am of opinion that it is decidedly expedient, for the reasons stated by the Madras High Court, to extend the provisions of Section 349, Criminal Procedure Code, in the manner indicated. But I would submit that if the accused is to be offered, *after* trial and conviction by the Magistrate, the option of a trial at the Sessions, he will in the vast majority of cases accept it, preferring future possibility of acquittal to present certainty of conviction. In such cases the trial before the Magistrate would be simply a waste of time, and I would suggest, on the analogy of 18 and 19 Vict., c. 126, extended by 31 and 32 Vict., c. 116, section 2, that the accused be given the option of trial by the Magistrate or trial by a jury, before a charge is drawn up. If, in the event of his consenting to be tried by the Magistrate and of the case being referred for enhanced punishment, the Sessions Court is empowered to make or direct further inquiry and bound to hear the offender, then, with the right of appeal to fall back on, should the Magistrate's decision be endorsed, I think the accused is amply protected.

10. Passing on to the other sections of the Bill, it appears to me that some definite provision for appeals and revision of orders passed under Sections 3, 4, 5 and 6 is necessary. I presume that in this respect the ordinary provisions of the Code of Criminal Procedure are intended to be followed, and these would, I think, be sufficient, but the intention should be expressly stated. In Section 6 the reference to Section 122, Criminal Procedure Code, is apparently a misprint for Section 112, because Section 122 merely deals with a Magistrate's power to reject sureties tendered. But if so, I submit that Section 6 of the Bill as it stands is very vague. Under Chapter VIII of the Code of Criminal Procedure, the necessity for security has first to be established, but in the case covered by Section 6 of the Bill, the question is not as to any such necessity, which has already been proved, but as to the admissibility of a relief from surveillance to security. The words "as far as may be" in Section 6 are capable of almost any construction, and unless greater precision is introduced a fresh investigation of any case under the section would probably be compulsory.

This, I submit, would be wholly unnecessary, and all that is required is a direction that, if the Magistrate is satisfied that security may be substituted for surveillance, he shall be guided by Sections 118, 121, 122 and 126, Criminal Procedure Code, except that the bond requiring such person to be of good behaviour shall, unless cancelled in accordance with law, bind him until the expiration of the period for which the order of surveillance was given; provided that the period for such security shall not commence until the security is actually

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furnished, and provided also that if the sureties are discharged under Section 126, Criminal Procedure Code, the original order of surveillance shall revive in default of fresh security.

11. In Section 7 of the Bill, I would suggest that the words "or to change their residence" be inserted after the words "leave the said limits" in clause (3).

12. In working Section 9 of the Bill it is possible that some difficulty may arise with regard to habitual offenders subject to surveillance who may take refuge in Foreign States. I do not think that Act XXI of 1879 would warrant the extradition of such persons, and therefore recommend that an addition necessary for this purpose be made to the schedule of the Act in the interests of Foreign States as well as of British India.

13. The class of offences aimed at by Section 12 of the Bill fortunately does not exist in Malabar, and hence, unless a great change comes over the district, there will be no necessity to extend the provisions of this section to it. But, in my opinion, these provisions would have a most salutary effect in tracts where such offences are committed by giving the community an interest in the prevention thereof.

From J. THOMSON, Esq., Acting District Magistrate, Tanjore, to the Chief Secretary to Government,—No. 1354, dated the 14th August 1890.

Replying to Government Order, Judicial Department, of 24th June last, No. 1074, I have the honour to state that I see no reason to take exception to the provisions of the draft Bill of the Punjab Government for surveillance of habitual offenders. The application of it to each such offender being discretionary with the court convicting him, that court will be in a fair position on the record to determine whether the convict's character requires that society should be so protected; and the sanction of the courts to police action, apart from the regulation it will undergo under the Act, will, I anticipate, have a much more deterrent result than their present unauthorized procedure regarding "suspects" and "known depredators."

2. Section 4 will meet what I have often considered both a hardship on suspects and a limitation on a Magistrate's action: where an individual suspected by those acquainted with him, without friends and without means, but possibly willing to follow an honest life, would, under the present law, be either consigned to jail or let go by the court in the hope that he would conduct himself properly.

3. It is much to be wished that better effect could be given in Madras to Sections 8 and 9 of Regulation XI of 1816, and that all persons enumerated in Section 45 of Act X of 1882 were under similar obligations as the "heads of villages." I have never yet seen a village head prosecuted for neglect of the duty laid on him by the Regulation; the reason no doubt being that such neglect is so difficult of proof. The village authorities, it seems to me, are drifting further and further away from the regular police, with serious results; and there can be no room for doubt that sympathy between them is essential to success both in prevention and detection. Section 45 of Act X of 1882 is defective by non-inclusion of all suspected bad characters.

4. It may be advisable to make provision in the Act similar to Section 124 of Act X of 1882 to discharge an order of surveillance.

5. Section 12 of the Bill will not be applicable to any part of Southern India that I am acquainted with. The chuckler class is often suspected for killing cattle for their hides, but these are individual acts. Fire-raising is rare, and originates in individual ill-will. Section 1 of Madras Act III of 1882 seems sufficient for all purposes in Madras.

6. Cattle-lifting as a profession being so common as it is in Madura and on the borders of that district, and the cause of much trouble to an agricultural people, I would feel inclined to extend an Act of the kind under consideration to cases of a single conviction.

7. Referring to paragraph 5 of the letter from the Government of India, it would be useless for prosecuting officers to attempt to instruct the courts on the advantages to society and to the offenders of sentences of transportation. Complaints are common of reduction of sentences by the High Court; and information supported by facts would best proceed from Government itself.

8. It has been too frequently the case in the past that habitual offenders have been punished by subordinate courts instead of being committed to Sessions under Section 348, Criminal Procedure Code. Attention by the District Magistrate will sooner or later put a stop to this; and such commitments are, I think, now much more common than they used to be. The course suggested by the Madras High Court in its letter, extract from which appears in the proceedings, is worthy of adoption; but probably in most cases the accused would take his chances and claim trial by jury.

9. While on this matter, one point complained of by Police officers may be brought to notice. The increasing sharpness of the criminal classes has taught them the advantage of *aliases*, and the consequence is frequently that when a convict is consigned to a large jail he is recognized as an old convict. It would not serve to march a prisoner about before conviction to see whether he could be identified as formerly convicted; and Section 221, Criminal Procedure Code, requires an allegation under Section 75, Indian Penal Code, to be set out in the (main) charge or to be added before sentence. The remedy for miscarriages of the sort would seem to be to make previous conviction an addendum to a trial at any time while the sentence under the trial is current.

From H. LEFANU, Esq., Collector and District Magistrate of North Arcot, to the Chief Secretary to Government,—No. 1102- (Index), dated the 14th August 1890.

I have the honour to reply to G.O., dated 24th June 1890, No. 1074, Judicial.

2. The Government order asks for my opinion on the provisions of the Bill proposed by Sir James Lyall, and on the other points noticed in the letter of the Government of India printed with the above reference. I shall touch on the Bill last.

"The Government of India believes that the number of professional criminals in India who do not belong to these tribes and cannot be reached by the law regarding them is not inconsiderable."

3. The marginally-noted remark is very true as regards this Presidency. To define a "tribe" would be difficult, unless it were supposed to be co-terminous with a "caste." Thus, it would not be easy to say whether "Karavars" are a tribe or not. "Maravar" or "Kaller" is a caste-name. No doubt both are in common parlance synonymous for thieves, but these castes contain so many respectable persons amongst their number that Act XXVII of 1871 would be inapplicable to them. We have, in this district, a generic term for bad characters—the word "Alagiri," however it be spelt. It is a slang colloquial phrase, not to be found in the dictionary. The police could lay their hands on thousands of "Alagiris," but they cannot be called a "tribe;" and though, no doubt, they are a "class of persons addicted to the systematic commission of non-bailable offences," in the terms of section 2 of Act XXVII of 1871, it would be a very sweeping course to include such a very undefined class of persons in our category. If a proclamation were issued, declaring them to be a "criminal tribe," we should be just as much at sea as ever, for there would be no certainty as to who was properly an Alagiri so as to come within the terms of the definition.

4. The power of demanding security for good behaviour is, and is likely to remain, a dead-letter. There is an appeal against the order, and, so long as Appellate Courts require rigid proof of what does not admit of mathematical demonstration, the Police and Magistracy hesitate to use a weapon the temper of which they doubt.

5. The Governor General expresses a fear that Section 75 of the Indian Penal Code has not been properly used. There is no doubt whatever on the subject. I have not time to get statistics, but, if Government care for them, they would be forthcoming; I do not hesitate, however, to say that, if one habitual offender is specifically brought to book per week in this district, it is the utmost. I should say 30 to 40 per annum was more like the figure. I risk the guess from memory of the faithful perusal of the Magisterial calendars of nearly three years. Why this should be so, and the remedy, is not far to seek. No proper attempt, except quite lately in a feeble sort of way, has been made to keep proper registers of our habitual criminals, and, unless an offender is weak enough to commit his second offence in the limits of the police station where he is known, the chances are that his previous conviction is not proved. A man commits an offence in station A. The police confer and compare notes, but, unless one of them happens to know the offender personally, they are quite at a loss to trace him. What is wanted is a central anthropometric register. An offender is arrested. His height is, say, 5 feet 9 inches. We turn to the general register under this height. Then we check it by chest measurement, or cranial measurements, finally winnowing one man out from another by private marks aided at last by a photograph; and, if a man is really in the register, he ought to be found within five minutes. If the man is arrested at a distant station, his measurements and marks are sent in to head-quarters and his identification is equally certain. Adjoining districts should have duplicates of these registers. The system is in full swing in France. I wrote privately to Pondicherry to try and find out what the French mode of measurement is, but have not had an answer yet. Meanwhile, as a beginning, Mr. Agar is going to start a register at Vellore to include the bad characters in the Central Jail there. I would urge that a reference be made to Paris to get the mode of measuring in vogue there. The cranial measurements made, I presume, with a caliper, would be invaluable, but should be scientifically accurate to be of use. With such a register it would, I believe, be found that at

least half the jail population at Vellore are recidivistes. Before cooking our hare we have to catch him, and, before discussing how to deal with habitual criminals, we must first register them. In a letter which I enclose from Mr. Agar he touches on a point worth considering, *i.e.*, that prisoners should be released in their villages. The police, at present, lose sight of them altogether on release.

6. In paragraph 3 of the letter of the Government of India, a distinction is drawn between public and private registers of suspects. We have no such register that I know of, but our K. D. register is public enough—for those concerned—and no harm comes of it. If any extended measure is taken to bring habitual offenders under surveillance, the register could not well, and need not, be secret. I think that every one who is on the register should be aware of the fact—otherwise how would mistakes be corrected ?

7. In the same paragraph the Government of India hints that the measures of surveillance adopted in reference to returned convicts from the Andamans might be extended to habituals generally. No doubt it might, and with advantage. It is, however, a question which I would rather leave to the Inspector General, whether some increase in the Police force would not be necessary to this end.

8. As to paragraph 4, no special law is necessary in this district, and I might say in this Presidency, for the prevention of cattle-poisoning and arson. The former crime is on the decrease, and never was widely prevalent : the latter is rare, and the charges brought are generally false. I do not think, either, that local circumstances call for new provisions to indemnify persons for the losses referred to in the same paragraph. Our local population is timid and inactive enough already. If a sufferer were sure of compensation, his last stimulus to self-defence would be removed. The only good that would be likely to come of such an enactment would be to the persons who got up false cases of the kind, to levy toll, by way of indemnification, on their neighbours.

9. Paragraph 5 touches on the benefits of extended recourse to transportation. It is a measure above praise, but I do not think that the Government of India is justified in relying on the Judicial Department in doing their share to carry it out. The Sessions Judges are slow to inflict such sentences, and the High Court is not slow to revise them. If a Sessions Judge is weak enough to deal with habituals in this way, he would encourage the Magistracy to commit cases and double his work. The High Court seems to have a jealousy of the Lower Courts when heavy sentences are inflicted, as though a heavy sentence were a prerogative of the High Court. Speaking as a Magistrate of long and extended experience, I should say that both Police and Magistracy fight shy of committals. If the Magistrate deals with the case himself, he is certain, in the first instance at all events, what the prisoner will get; and the Sessions Judge may be more relied on for firmness in appeal than the High Court. If the case is committed to the Sessions Court the result is problematical, the known $a + b$ of the Judge being tempered by the fickleness of juries and assessors, to the latter of whom the High Court are marvellously deferential. If, however, the case is tried by the Sessions Judge, and heard on appeal by the High Court, the result baffles all conjecture. I do not, as a Magistrate, anticipate much from the proposals in paragraphs 5 and 6, unless the executive are backed by a wooden rule prescribing a minimum of punishment, which, in the case of habituals, would be no hardship, and which, in the interests of honest men out of jail, ought, I respectfully submit, to be passed. The picture of the Government Prosecutor "pointedly drawing the attention" of an unsympathetic Court "to the inadequacy of short sentences of imprisonment in the case of habitual offenders" is one invoking the smile of the initiated. If any progress is to be made, the teeth of the Courts should be drawn by prescribing *minimum* sentences for old offenders.

10. The law of appeal in this country is all in favour of the prisoner. He can—now—get no more, rare cases excepted, and he may get less. I will take one case :—A certain man, holding an office of trust, misappropriated R500 of Government money. The Joint Magistrate gave him two years and fined him R1,000. He appealed to the Sessions Judge, who reduced the sentence to one year and R1,000 fine. Then he tried the High Court, which reduced the sentence of imprisonment to ten months, and the fine to the amount lost by Government, part of the R500 having been recovered. Now a reduction from two years to one is intelligible; but the process by which one year is reduced to ten months is incomprehensible. So, too, when the fine is reduced to the exact sum lost, the Appellate Court makes no allowance for the fact that Government have to feed and clothe the prisoner while in jail, and were put to heavy expenses in prosecuting him in three courts. On the Continent the hammer of justice—except where the sentiments come in—strikes much more severely and inevitably than with us. The prisoner has to pay the costs of his trial. If the charge is proved, a swinging sentence

follows, and it is not necessary there for the executive to enjoin on the prosecution to "pointedly draw the attention of the courts to the inadequacy of short sentences of imprisonment in the case of habitual offenders." The Staats An walt is empowered by law to *call for a specified sentence*, and it rarely happens that a lesser is inflicted. Here we handicap the prosecution as heavily as possible, and then affect wonder that our habituals are abroad, doing after their kind.

11. The proposal of the Madras High Court, referred to in paragraph 6 of the Government of India's letter, is undoubtedly good, if it was not tempered by the uncertainty of an appeal. *Timeo Danaos.* The entire force of the enactment would, however, be lost if the High Court's suggestion, that the prisoner be offered the option of a committal, is acted on. In a "Government by appeals" the issue could be but one. The prisoner, knowing the Magistrate's decision, would elect to be tried by a jury. If they acquit him, which is always on the cards, "*solvuntur tabulæ*," if they do not, the odds are that the Judge will give him no more than the Magistrate—he may give him less—and he has the High Court in reserve, whose leniency is proverbial.

12. Before coming to the Bill, I would repeat that the most urgent need is, the electioneering agent's cry—"register." Having registered we can then deal with the "habitual." Section 1 (1) would require modification if the Bill is to be generally applied. Section 6 would be of no effect here. The rule is that "habituals" cannot give security—which is perhaps one of the reasons why the law has always been so considerately worked here, for a Magistrate hesitates to send a man to jail for not giving security. Those, however, who could give security are exactly the persons from whom it should not be taken.

Section 7.—I would have two registers—the first into which, for purposes of identification *only*, all persons convicted of offences against property should be entered. The second the register prescribed by the Act. The first register should be secret; the second public—for those concerned. Both registers should be communicated to the Superintendent of Police and District Magistrate of adjoining districts. Mr. Agar points out in his letter enclosed that the Act touches only the known criminals, but leaves the criminal classes out of consideration. I have alluded to the difficulty of action in this direction in paragraph 3 *supra*. Mr. Agar's objection is weighty; but I doubt if, supposing his wishes to be complied with, we could either maintain the bulky register involved, or control the movements of the gangs in question. With our present force I should say certainly not, and any law is a bad law which is a *brutum fulmen*. On the whole, having to deal only with what is possible, I am inclined to think that, at present at least, we must be content to deal only with detected offenders. The powers of the police would be greater than Mr. Agar supposes, for, if properly kept, 95 per cent. of those entered in the first register, which I propose, would merge in register No. 2. I must add that, even taking Section 7 of the Act as it is, I do not think that it would work unless the Police force is augmented. It is cut down to starvation point now. Mr. Agar makes some suggestions as to paragraph 7 in his letter No. 944, dated 18th July 1890, enclosed.

Section 8—Query, Is "whipping" definite enough? It is not defined in the General Clauses Act.

Section 9.—This is practically in force here—*vide* copy of my Circular No. 1298 of 1889, and works well—*vide* paragraph 4 of Mr. Agar's letter enclosed.

Section 12 is, as I have already said, not necessary here.

13. I regret that I have not been able to go into the matter more fully, but stress of business has made it impossible. I have had the reference before me every day, but my hands were too full of work to allow of my taking it up sooner.

ENCLOSURES.

No. 1298 Magl.

CIRCULAR.

It has been brought to notice that several known depredators have slipped out of sight for want of early information being given to police by village magistrates.

2. All village magistrates are hereby ordered to enter in their diaries the presence in their villages of suspects and those known to commit crime, and to report at once to the nearest police station confidentially when such persons leave the villages, especially if they should do so after nightfall. In the latter case the taliaries should at once be put on the scent to trace where they go.

3. Any village magistrate failing to act as directed above will be liable to punishment for disobedience to orders.

CHITTOOR, (Signed) H. LE FANU,
22nd November 1889. *District Magistrate.*

From A. P. AGAR, Esq., Superintendent of Police, North Arcot, to the District Magistrate, North Arcot,—No. 944, dated the 18th July 1890.

I have the honour to reply to your reference on Government, No. 267, dated 6th instant, as follows.

2. A large proportion of the habitual offenders in this Presidency are members of wandering gangs who have no fixed abode, and if one such is brought under the Act the whole gang will have to alter their mode of livelihood and settle down in the prescribed place, or the habitual will have to be forced to leave his gang and settle down alone.

3. I have several times represented that the provisions of the Criminal Tribes Act (which brings in criminal classes), quoted in Mr. Lyall's letter, should be brought into force against these people, and in my opinion, as far as this Presidency is concerned, the Habitual Offenders Act will be but a partial success unless it is made to include these persons or unless the above Act is enforced against them, as done in the North-West. There they first had their Criminal Tribes Act, and now they propose an Act to control the actions of the rest of the criminal population. I have been told that the Criminal Tribes Act was intended for quite a different class of people to what we have in this Presidency. No doubt they are different in the same way that the ordinary population is, but I doubt very much if the North-West tribes are more expert criminals than some of our Maravars, Kallers, Karavars, Yerikalas, Domars, Yanadis and Sugalis, or more ready for crime when a good opportunity offers. In some parts of the Presidency, as you are aware, such as Nellore, wandering gangs are exceedingly numerous, and traverse and re-traverse the district like streams of ants, and when it is considered that the majority of these should be treated as habituals, it will appear rather futile to deal only with the stay-at-home criminal who is under much closer surveillance.

4. I cannot say what procedure has been in vogue in the North-West with regard to the watch of habituals, but in spite of having no Act to legalize our actions, and though there is no doubt much left to be desired in the way they are controlled, our known depredators are, as a rule, fairly well in hand; they are frequently looked up, and since your order last year their absence is reported by the village magistrates. The Act will give us legal powers, and power to exercise a much closer surveillance, but it will only touch the most easily managed portion of the criminal population, unless it is intended to treat members of wandering gangs as habituals and force them to settle down. If this is not done, we shall have stringent laws regulating the freedom of the least difficult portion of our criminals, and the more dangerous portion will be outside them.

5. Taking them all round, all our wandering tribes commit crime, but in different degrees, Some of them, Dasaris and such like, confine themselves to petty pilfering, but with very few exceptions, they are all addicted to some kind of crime. The late system of watch failed in my opinion, as I lately reported, through our having no legal powers to control their movements. It was the easeist thing in the world for a gang to shake off a constable, and surveillance was only carried out with anything approaching completeness in some out-of-the-way tracts, where the gangs are more unsophisticated, and the officials, in the interests of order, stepped beyond the legal line of their instructions.

6. Take Allighiris—every one is a criminal, for they have no other livelihood: they travel long distances and are excellent actors. The Chingleput police recently reported that it was impossible to watch these persons, who are in great force near Tiruvallur in our frontier and flood our festivals. I have recommended that these persons should be brought under the Criminal Tribes Act, as they are undoubtedly a criminal class, but it has not met with any response, and I have repeated the suggestion this year, and I don't suppose it will meet with any more than it has before, especially as you have not supported it.

7. Thus we go on year after year making the same complaints and the same suggestions, and year by year finding the means at our disposal growing more and more inefficient as the strength of the force becomes less adequate and as the criminals gain in intelligence and their knowledge of the law. A few years ago both police and village magistrates could do much more in the way of moral persuasion with gangs and habituals than they can now. The Bata-Turkas of Piler and some parts of Chandragiri are another very clever class of criminals. These men are so good at disguises that they can deceive Brahmans and gain access to their houses during ceremonies when valuables are left about.

8. This you may say is going altogether beyond the scope of the Bill under discussion, but I wished to take the opportunity of urging on you the necessity of representing that, unless wandering criminals are included in the Act or are put under another Act, as they are in the North-West, the worst section of the criminal population will be left without really stringent surveillance, which can only be carried out under the authority of the law. If brought under this Act their wandering habits could be permitted, but regulated, and only certain members of the gang would be allowed to be absent at a time and for a limited period. Then the really criminal gangs might be made to pay for the constables appointed to accompany them. The railway extension will no doubt influence many of these gangs who earn their livelihood by carrying grain and salt to settle down, but they will not readily take to an honest life unless they are kept under strict control for some time.

9. To turn to Section 7 of the Bill. The present K. D. register would answer the purpose (*a*) with some additions and a more accurate system of recording descriptions; (*b*) the limit should be those of the village; (*c*) he should produce his pass before the nearest station-house officer for his countersignature, and the station-house officer should at once intimate the habitual's departure to the station-house officer of the place he is about to visit. The habitual should report himself to the village magistrates on arrival if at a village without a police station, and the village magistrate will report to the station. If there is a police station he will report to the station-house officer, and always to the station-house officer before leaving for his own village; (*d*) the Inspector should be the officer before whom he should present himself from time to time; (*e*) he should be allowed to be absent in the forenoon and afternoon; (*f*) he should be required to be present in his house at 11 P.M. at 4 A.M., and at noon. With regard to the last paragraph of Section 10, you ordered this as far as village headmen are concerned last year, and it is having a good effect.

10. I do not think any more stringent measures could be adopted short of imprisonment.

11. I would, however, urge the necessity of all convicts convicted under Chapters XII and XVII of the Penal Code being released in their villages or at the nearest police station. The trick of giving a wrong place of residence is increasing, and we lose sight of many persons, and thus many escape prosecution under Section 75, Indian Penal Code. If on release it is found that the convict gave a wrong residence he should be put before a Magistrate to be treated as an habitual or bound over for good behaviour. Even in the case of persons who give their right residences we lose several of the worst—those who wish to continue at crime and evade the local police. At present the arrival of the convict is waited for, and if he does not turn up after a reasonable time he is searched for and very often not found. I offer this as a suggestion that would help to keep the habituals in check.

12. I regret that indisposition has caused me to delay this.

From C. F. MACCARTIE, Esq., District Magistrate, Nilgiris, to the Chief Secretary to the Government of Madras,—No. 791, dated the 19th August 1890.

As desired in G.O. of 24th June 1890, No. 1074 (Judicial), I have the honour to submit the following remarks on the draft Bill for the more effectual surveillance and control of habitual offenders and the other points noticed in Mr. Lyall's letter, dated 31st May 1890 No. 1—418.

2. Taking the latter first, the subsidiary questions on which expression of opinion is invited appear to be as follows:—

(1) The inadequacy of short sentences of imprisonment in case of habitual offenders.

(2) The advantages of imposing sentences of transportation for life on persons habitually guilty of offences against property.

(3) The Madras High Court's suggestion to extend the provisions of Section 349, Criminal Procedure Code, to Sessions Courts.

(4) The prevention of special acts of mischief, such as cattle-poisoning and arson.

3. As regards (1) and (2), the generally non-deterrent character of sentences inflicted on habitual offenders and the comparatively small extent to which the provisions of Section 75, Indian Penal Code, authorising the infliction of a sentence of transportation for life in case of persons habitually guilty of offences against property, seem already to have attracted the attention of Government, which, in reviewing the administration of criminal justice for 1888—G.O., No. 2133, dated 14th December 1889—remarks as follows:—

"In separate proceedings the Government has called attention to the fact that lighter sentences are imposed now than were passed 12 years ago, and this may be taken as a symptom of a general increase of leniency in dealing with persons accused of crime."

Again, paragraph 5 of G.O., dated 22nd July 1890, No. 1221 (Judicial), reviewing the administration report of the Jail Department, contains the assertion that—

"there is an inclination on the part of the superior courts (excepting in the case of imprisonment for a period exceeding ten years and of sentences of transportation for life or for a term) to award lighter punishments than in preceding years."

4. The experience of most District Magistrates will, I think, confirm the justice of the foregoing remarks, and there is no doubt whatever that the subordinate criminal courts of this Presidency do exhibit a marked inclination to deal finally with habitual offenders instead of committing them to the Sessions. In such cases as are committed, the sentences inflicted by Sessions Judges, as a rule, are adequate, but their deterrent effect is too often weakened by the tendency of the High Court to mitigate sentences while confirming convictions. I quote here from reports of revision and appeal cases in the daily press and from my own experience as District Magistrate of North Arcot and Tinnevelly—both heavy criminal districts—in both of which I often had to lament the unexplained mitigation of severe sentences imposed on notorious criminals.

5. Tendencies and inclinations cannot be combated effectively by legislative enactment, but there is no reason why an executive order should not be issued to all Sessions Judges calling their attention to the advantages claimed for the sentence of transportation for life by the Commissioners who reported on the Port Blair convict establishment, with a request that the working of Section 75, Indian Penal Code, may be especially noticed in each year's administration report.

6. One, and perhaps the chief, reason for the unduly lenient treatment by the lower criminal courts of habitual offenders is the omission of the prosecuting police to impress the importance of severity on the sentencing courts or to make up and place before them the antecedents of the accused, with especial reference to his career between the date of last release from jail and the commission of the subsequent crime. The acquisition of such information is entirely within the province of the police, to whom it would present no special difficulty, and the evidence thus forthcoming would furnish the sentencing court with a reliable test for determining the character of the punishment to be imposed.

7. All the police now do is to obtain a copy of the previous conviction and evidence of identity. This is quite inadequate. The Magistrate, before he can be held responsible for undue leniency, must be placed in a position to determine the criminal's propensities as revealed by his mode of life and associates between sentences.

8. The suggestion of the Madras High Court for the enactment of a provision on the lines of Section 349, Criminal Procedure Code, enabling Magistrates to enter up a conviction in case of old offenders and to refer such case to the Sessions Court for sentence, is eminently worthy of adoption on the grounds of economy, public convenience, and the relief it will afford to the multitudes of struggling witnesses who now have to dance attendance during the progress of two trials. As remarked by the High Court, the privilege secured to the accused of trial by jury must be saved by offering him the option of commitment to the Sessions in cases where such right now exists. In this connection, however, I would urge that the time has arrived for abrogating the right of trial by jury in case of offences against property. Experience renders it daily clearer that the majority of juries in this Presidency are unfit for the intelligent exercise of judicial functions. In confirmation, I would refer to the reported proceedings of the High Court. Juries, as now constituted, either recklessly convict in case of low-caste old offenders, or as recklessly acquit when the offenders involved are in a position to influence the verdict. For illustration I would point to the Tinnevelly district, where two years ago it was found almost impossible to induce an ordinary jury of Pillays to convict a Maravar for fear of their houses or ricks being burnt down by some incensed sympathiser with the convicted marauder. There are many offences in the Penal Code connected with the social life of Hindus and Mussalmans, such as defamation, adultery, abduction, &c., which are eminently adapted for trial by jury, and such offences I would transfer to the trial-by-jury list as a solace to native feeling for the withdrawal therefrom of crimes relating to property.

9. So far as this Presidency is concerned, I doubt if legislation is necessary for the prevention of special acts of mischief. Chucklers, no doubt, occasionally poison cattle for their hides, and arson is certainly not unknown, but there is no evidence whatever forthcoming of any widespread conspiracy to commit or connive at such crimes, which therefore may be left to the ordinary arm of the law unstrengthened by any special enactment.

10. Turning to the control of habitual offenders, there is no doubt that the change in the law made in 1882 has weakened the hands of the executive to the manifest advantage of bad characters, whom the development of railways, with other potent causes, has placed in

a position to laugh at the security provisions of the Code of Criminal Procedure. It has thus become imperative to reinforce the law as it stands at present. Hence the present Bill, the general provisions of which are eminently sound.

As criticism on the form of the Bill is not called for, I confine myself to the following observations:—

In Section (2) of the Bill "habitual offenders" are defined as persons convicted on two or more occasions of offences under Chapter XII or XVII, Indian Penal Code. The latter chapter includes both mischief and criminal trespass, which, though technically offences against the criminal law, are, as a matter of fact, often committed by respectable ryots in connection with disputes of a *quasi*-civil character relating to land or the diversion of water. As the framers could never have intended to bring such offences within the scope of this Bill, their exclusion should be provided by a saving clause.

The quotation of Section 122, Criminal Procedure Code, in line 7 of section VI, is irrelevant, and seems due to an oversight. The framers must have meant to quote Chapter VIII Criminal Procedure Code, which should accordingly be substituted.

In Section VIII, line (1), for Section VI, read Section VII.

Sections 10 and 11 render the village police responsible for, and punishable for, not carrying out various acts of surveillance.

Looking to the severity of the penalty prescribed in Section XI and to the multifarious nature of the duties exacted from headmen of villages in this Presidency, who are often called away from home for considerable periods, I think they should be protected by the addition of the following clause to Section XI:—"In the absence of reasonable excuse, the burden of proving which shall lie on such person."

The only agency to which the performance of the duties specified in Section 10 can be entrusted is the subordinate village police, but I see little or no prospects of the work being efficiently carried out until their reorganization, at whatever cost to the State. The Police Administration Reports bristle with complaints of the uselessness of the village police, and the moral may be pointed by the following extract from the Madura Report for 1888:—

"Till the village police are paid regularly we cannot expect much help from them, as having inams they do not wish to make enemies in the village by informing against their neighbours, who might retaliate and steal or burn their crops. Once the village police are regularly paid and realize that they are bound to inform or be punished, there will be a marked improvement in detection."

From H. W. Foster, Esq., Offg. Registrar of the High Court of Judicature, Appeallate Side, to the Chief Secretary to the Government, of Madras,—No. 1943, dated the 16th August 1890.

Adverting to General Orders dated 24th June last, No. 1074, Judicial, communicating letter (with enclosures) from the Government of India, dated 31st May 1890, No. 1—41E, for favour of opinion of the Honourable Judges on the provisions of a draft Bill regarding surveillance of habitual offenders and on the other points noticed in the said letter, I am directed to forward a transcript of the minutes recorded by the Honourable Justices Handley, Best, and Weir, and to state that the Honourable the Chief Justice has offered no remarks.

2. Any minutes that may be recorded by their Lordships Justices Muttusami Aiyar and Shephard will be duly submitted.

ENCLOSURE.

Minutes.

Mr. Justice Handley.—I entirely agree with the remark in paragraph 4 of the letter from the Government of India, that legislation such as is proposed should be general and not confined to a particular province. With the increased facilities for communication between one part of India and another, effected by the spread of railways, it becomes more and more important that the criminal law should be, as far as possible, uniform.

2. As to the necessity for such legislation as is proposed, I cannot express my decided opinion, but unless a very strong necessity does exist, I am doubtful as to the expediency of giving the police as at present constituted any greater powers than they now possess over persons who have been previously convicted of offences.

3. As to the proposal made by the Madras High Court in 1885, and referred to in paragraph 6 of the letter from the Government of India, it occurs to me that if the option is given to the accused whether he shall be convicted by the Magistrate or committed for trial before the Court of Session, he will in almost all cases elect the latter alternative, as he has

everything to gain and nothing to lose by so doing, the Magistrate having already come to the conclusion that he is guilty.

4. I have no other remarks to offer upon the Bill.

Mr. Justice Best.—In Section 5 of the draft Bill I would leave out the words "or who has been released from transportation or imprisonment within a period of three years from such commencement," as it seems undesirable to rake up afresh a man's offence for which he has already completed his punishment before the Act comes into operation. I also doubt the propriety of making the proposed law applicable to persons who have been convicted before, but happen to be undergoing their punishment at the time when the law is enacted.

2. With reference to Section 8, I would exclude whipping from the punishments to which an habitual offender violating any of the rules prescribed under Section 6 (query 7) shall be liable.

3. In Section 11, I would insert the word "wittingly" before the word "fail."

4. I would further recommend the adoption of the suggestions made by this Court in its letter of 27th July 1885, No. 2092, referred to in paragraph 6 of Mr. Lyall's letter printed at the beginning of these proceedings. The difficulty as to the offences being triable by jury might, I think, be well met by confining trial by jury to "offences against the State," Chapter VI of the Penal Code, which are likely to be of such extremely rare occurrence as to allow of the striking off from the list of jurors many incompetent persons, who are now required to attend the Sessions Courts from distant places, and to limit the list to really competent persons who would only have to attend on rare occasions, if at all.

5. Experience has shown that trial by jury in ordinary cases is not suited to this country, except in the Presidency towns, where the committal is to the High Court, and the jurors are more intelligent than the inhabitants of villages in the mofussil.

Mr. Justice Weir.—I am of opinion that the proposed surveillance of habitual offenders is shown to be necessary, and would be of great benefit to the community.

2. I entertain doubts, however, as to whether the system should be applied to offenders who have been convicted only *twice*. A person twice convicted can scarcely be said to be an habitual offender, although he may be on the way to become one.

3. With this exception I approve of the provisions of the Bill on the subject.

4. As regards the proposals to repress certain mischievous offences by assessing compensation on the circles in which they occur, I think the power proposed to be conferred is a useful one, with which the Local Government might be invested. As far as my experience goes, however, offences of the class described are not committed in this Presidency as a result of widespread conspiracy or of connivance on the part of classes of the community. They are committed generally from motives of private enmity or grudge, and they are also generally committed in circumstances which render detection extremely difficult. The non-detection, therefore, of such offences does not in itself argue any culpable apathy on the part of the community concerned. While, however, this may be so, it seems expedient that the Local Government should have the power proposed for application in case of necessity.

5. Referring to paragraph 5 of the Government of India's letter, I think it undoubtedly is the fact that the provisions of Section 75 of the Penal Code are not sufficiently resorted to in this Presidency, and I think the views of the Government of India on this subject might with advantage be pressed on the attention of all Sessions Judges, District and Presidency Magistrates.

6. As regards the suggestion made by this Court in their Registrar's letter of 27th July 1885, to empower Magistrates, on a conviction of habitual offenders, to refer the case to a Sessions Court for sentence, which is stated to now commend itself to the Government of India, it has to be observed that the Government of India would appear to have overlooked the difficulty arising from the circumstance that the offender, in cases of the kind supposed, has, in this Presidency, the right to be tried by jury and the proposal made by this High Court for meeting the difficulty. Speaking for myself, I do not see that the difficulty is a very real one.

7. If the principle (of Section 349, Criminal Procedure Code) of allowing a convicted person to be sentenced by a Court other than the Court which has tried him is to be adopted at all, I do not see why it should not be followed in its entirety.

From H. R. FARMER, Esq,. Sessions Judge, Vizagapatam, to the Chief Secretary to Government,—No. 580, dated the 14th August 1890.

I have the honour, as directed in G. O., dated 24th June 1890, No. 1074, Judicial, to submit my opinion on the provisions of the draft Bill of the Punjab Government for the more effectual surveillance and control of habitual offenders, and on the other points noticed in the letter of the Government of India of the 31st May 1890, No. 1—418.

2. Speaking generally, an enactment of this kind is, I submit, called for, and the draft Bill of the Punjab Government proposes to deal with the matter in a manner which past experience in England shows to be likely to attain the object in view; but this experience cannot altogether take the place of experience of this country, and the remarks which I have to offer refer to precautions which seem called for with reference to such experience. The remarks refer chiefly to three points:—

(1) The necessity of seeing that persons who are not in reality habitual offenders are not dealt with as such (paragraphs 6 and 7 below).

(2) The necessity of insisting on really deterrent sentences in the case of those clearly shown to be habitual offenders (paragraph 6).

(3) The necessity of preventing the proposed Act from becoming a means of oppression in the hands of subordinate police officers (paragraph 3).

Paragraphs 4 and 5 of this letter contain some minor criticisms on the Bill.

3. I am of opinion that very great care will have to be exercised in supervising the conduct of subordinate police officers to be entrusted with the surveillance of habitual criminals. No doubt, as remarked by the Government of India, steps have been taken, and others are under contemplation, for improving the condition of, and raising the standard of, intelligence and honesty among the police. But until these measures have attained more marked results than at present, it appears to me that the proposed enactment, if its working is not very carefully supervised, may be used as an engine of oppression against individuals, rather than as a means of repression of crime.

4. Looking at the provisions of the draft Bill in detail, I have no remarks to offer on its first ten sections. As regards the eleventh section, it seems to me to be a re-enactment of what is already the law under the latter part of Section 176 of the Indian Penal Code. The Indian Penal Code provides a punishment heavier, it will be observed, than the Bill does for those who, being legally bound to give information in respect of the commission of an offence, fail to do so in the manner and at the time required by law. If it be considered that Section 11 of the Bill may under these circumstances be omitted as superfluous, the wording of Section 10 may be changed by introducing the words "legally bound" instead of the words "it shall be the duty." This will show clearly that neglect on the part of village headmen, village watchers, and others mentioned in Section 10, of the duty therein prescribed, renders them liable to punishment under Section 176 of the Indian Penal Code. As regards Section 12, it will not, as far as my experience goes, be found necessary to give effect to its provisions in this part of India.

5. There remain the other points noticed in the letter from the Government of India. The Government of India notice the fact that the legislature advisedly refrained from extending the provisions of Section 110, Criminal Procedure Code, to persons of "notoriously bad livelihood or of a dangerous character." The grounds for this omission are stated to have been that the words were vague, and that the powers which they placed in the hands of the police were liable to abuse. Though improvement in the *personnel* of the police is subsequently noticed, the Government of India do not indicate that present circumstances warrant a reconsideration of the conclusion arrived at already on this point. If, however, an opinion is called for, I beg to submit that, for the reasons which prevailed with the Legislature in passing the present Code of Criminal Procedure, it seems to me inadvisable to extend the provisions of Section 110 in the direction indicated.

6. The other question referred for consideration regards the more intelligent working of the provisions of Section 75 of the Indian Penal Code. In this respect I am of opinion that there is room for much improvement. When a man has once fairly earned the reputation of being an incorrigible pest to society, a Magistrate who neglects the provisions of Section 348 of the Criminal Procedure Code, and thus precludes the possibility of a sentence of transportation for life, should, I think, be made to feel that he has incurred the displeasure of Government. It is, I believe, to a considerable extent owing to the neglect of the provisions of this section that old offenders escape sentences of transportation, which are, it appears to me, the most appropriate sentences in the case of those who are shown to be practically incorrigible To enable Government to see that punishments in case of old offenders are intelligently apportioned with reference to the punishments already undergone, a periodical return in the form of a tabular statement might with advantage be prescribed. This would show whether Magistrates sentenced men to imprisonment after such punishment had already been proved to be ineffectual, and when, with reference to Section 348, Criminal Procedure Code, and Section 75, Indian Penal Code, a sentence of transportation is called for. To illustrate

the force of what I have said, as to inadequacy of punishments in these cases, I give below a statement showing the punishments inflicted on four old offenders convicted by two of the 1st class Magistrates of this district during the last nine months:—

Name of prisoner.	Number of conviction.	Punishments.	Date of punishment and section of Indian Penal Code.	Magistrate inflicting punishment.
Timma Daligadu, *alias* Marri Lakshmudu.	1	12 months' rigorous imprisonment.	13th August 1884. Section 392, I. P. C.	Deputy Magistrate, Vizianagram.
	2	6 months' rigorous imprisonment.	6th June 1887. Sections 457, 380 and 75.	2nd class Magistrate, Palkonda.
	3	4 months' rigorous imprisonment and 30 stripes.	9th April 1890. Sections 457, 380 and 75.	Deputy Magistrate, Vizianagram.
Burla Appadu . .	1	30 days' rigorous imprisonment.	Not given. Sections 457 and 380.	2nd class Magistrate.
	2	5 months' rigorous imprisonment.	Not given. Sections 379 and 75.	Do. do.
	3	6 months' rigorous imprisonment and R20 fine, in default 6 weeks.	Not given. Sections 379 and 75.	Do. do.
	4	10 months' rigorous imprisonment and R30 fine, in default 2 months.	Not given. Sections 379 and 75.	Deputy Magistrate, Vizianagram.
	5	6 months' rigorous imprisonment and 30 stripes.	25th November 1889. Sections 379 and 75.	Do. do.
	6	6 months' rigorous imprisonment, of which 3 weeks to be solitary.	Do. do.	Do. do.
Denkada Musiligadu .	1	5 years' rigorous imprisonment.	7th September 1881. Sections 457 and 380.	Sessions Court, Vizagapatam.
	2	2 years' rigorous imprisonment, of which 3 months solitary, and R20 fine, in default 6 months.	27th May 1890. Sections 392 and 75.	Deputy Magistrate, Vizagapatam.
Denkada Chinnigadu .	1	5 years' rigorous imprisonment.	7th September 1881. Sections 457 and 380.	Sessions Court, Vizagapatam.
	2	18 months' rigorous imprisonment, of which 2 months solitary, and R10 fine, in default 1 month.	27th May 1890. Sections 414 and 75.	Deputy Magistrate, Vizagapatam.

No case of this kind has been committed to the Sessions since I assumed charge of the court. When in Kurnool, however, this subject attracted my attention, and I prescribed a form of charge showing at a glance the particulars of previous offences and punishments. I beg to enclose a copy of this form of charge. I think it would be well to require Magistrates to enter in their charges *all* previous convictions. At present, there is reason to believe that this is not done. A Magistrate cannot ordinarily give the maximum punishment to which a person is liable for the *first* theft he commits, and consequently with reference to Section 75 a Magistrate is not competent to inflict on an old offender a heavier sentence than in the case of a first offence. The latter part of Section 221, Criminal Procedure Code, thus appears, for practical purposes, to refer to Sessions Courts only, which courts can, if Section 75 be quoted in the charge, transport a man for life who otherwise would only be liable to three years' imprisonment. Considering the way in which light sentences, as shown in statement above, are passed on old offenders who have already suffered heavier punishments, it has occurred to me as not impossible that the Magistrates may be influenced by the idea that the cases may, as the accused in these cases so often plead, be concocted against them as old offenders, and that the Magistrates, to save themselves the trouble of a thorough sifting of the evidence, and to avoid the resentment of the subordinate police officials in case of exposure, find it the easiest and pleasantest plan to accept the evidence brought forward by the police, and give a sentence which, if the offences were really committed, is evidently, with regard to previous punishments, inadequate. If it is thought that this view of what a 1st class Magistrate is likely to do in the case of an old offender is not warranted by facts, I beg to refer to the case disposed of by the High Court in Proceedings, dated 2nd April 1890, No. 529 (Judicial), and in Criminal Revision Case, No. 142 of 1890. In this case a Deputy Magistrate let an old offender serve out a sentence of six months' imprisonment by a Taluk Magistrate, and then, after it had been served out, confirmed it on appeal, though there was, as the High Court found, no evidence to support it, and though what purported to be evidence was taken behind the accused's back in contravention of Sections 422 and 428 of the Criminal Procedure Code. I enclose a copy of the High Court's Proceedings in this case. My belief is that men of the class to which old offenders belong often fail to get from their countrymen more justice than the old offender concerned in the case just referred to. At present, when an offence against property is reported in some of the less advanced localities to a station-house officer, his procedure not very unfrequently is, I fear, to arrange for the discovery, in the house of an habitual offender, of some easily-procurable duplicate of some of the property said to have been lost. These so-called habitual offenders, whose

first conviction by a Taluk Magistrate may have been obtained on questionable evidence, stand in abject dread of the police; and often, I am convinced, confess at their instigation to having committed offences which they have never committed. The facility with which juries are disposed to convict in such cases has been noticed by the High Court at the end of paragraph 51 and in paragraph 52 of their Report on the Administration of Criminal Justice for 1887. I think the same disposition exists amongst the Taluk Magistracy and some of the Magistrates of higher grade. If proper steps are taken to supervise the working of the Act and to prevent innocent victims of police oppression taking the place of hardened criminals on the lists of habitual offenders, I see no reason to anticipate anything but good to the community from the passing of the Bill under consideration. I consider there is no class of men who more need the safeguards which the law affords to accused persons; but at the same time, when, after a fair trial, they are convicted, steps should, in my opinion, be taken to prevent the award of such inadequate punishments as are now too frequently inflicted by the Magistracy. When a Magistrate awards an old offender a punishment not appreciably heavier than one which he has already suffered for a similar offence, I think he ought to be required to show strong grounds for his apparent leniency. Without in any way interfering with the individual discretion of the Magistracy, I think some idea might be given of the sentences which might be expected in an ordinary theft case on a second, third and fourth conviction. If something of this kind were done, I think the Magistrates would be more likely to acquit some of the so-called old offenders, who have now to be released on appeal, and would be more likely to give intelligently apportioned punishments to those to whom crime is clearly brought home. The result of action in this direction will, no doubt, be to increase the work of Sessions Courts, and in some cases of 1st class Magistrates.

7. This brings me to the proposed extension of the provisions of Section 349, Criminal Procedure Code, to Sessions Courts. I have lately had reason to consider the provisions of this section. I noticed that a 1st class Magistrate very seldom recorded the evidence when he sentenced old offenders. On looking at the wording of Section 349, it appeared to me doubtful whether the Legislature intended that a Magistrate should commence the trial of a case which *at the commencement of the trial* he knew he could not dispose of. For instance, if a man, who had already suffered a year's imprisonment for theft, were again charged with a serious offence of the same kind punishable under Chapter XVII, Indian Penal Code, a 3rd class Magistrate would, *when he read the charge sheet*, form the opinion that, if the accused were convicted, he ought to receive a "punishment more severe than such Magistrate is empowered to inflict." Now Section 349 provides for cases where such opinion is formed "*after hearing the evidence for the prosecution and the accused.*" Whether before the word "accused" the word "for" must be understood is not quite clear, and if it be understood, then the section does not provide for hearing the accused. Such provision is made in other sections, *e. g.*, Section 253. It therefore seems possible that this section was intended to provide for cases where the Magistrate on commencing the enquiry believed, as in cases provided for by the next following section, that he could pass sentence, and did not provide, as in practice it is taken to provide, for a Magistrate, who knows he cannot try the accused, recording the evidence, and for sentence being passed by a Magistrate who has not heard the evidence. If the section had been intended to make such an important exception to the rule that the adjudicating Magistrate must record the evidence on which he adjudicates, I think the section might have been differently worded. As it stands, it appears hardly to harmonise with Section 33, Indian Evidence Act, which admits evidence taken in an earlier stage of a judicial proceeding as relevant in a later stage of the same judicial proceeding only when the witness is dead or his attendance would cause unreasonable delay. In ordinary cases, when a Magistrate has, for unforeseen circumstances, to go on with a case in which the evidence has been recorded by another Magistrate, the accused has a right to demand that the witnesses be re-summoned and re-heard (Section 350). Even in civil cases there is no provision of law by which a Judge can adjudicate on evidence which he has arranged to be recorded by another Judge who cannot dispose of the case. In special and exceptional cases, Section 191 and Chapter 25 of the Civil Procedure Code provide for the admissibility of evidence not recorded by the Judge who disposes of the case. If the question of taking from old offenders the safeguard which makes their conviction impossible by a Judge who has not heard the evidence had been discussed, and decided against the old offender, I should not have opened this question. I have not the Proceedings of the Legislative Council when Acts XXV of 1861 and X of 1872 were passed, but if the question were not discussed then, it will, I hope, receive careful consideration before it is decided. If, however, the section is held to provide for the procedure now adopted, namely, for the Magistrate acting as a Sessions Judge to whom a case has been committed, with the difference that the Magistrate has

not to hear the evidence, then I think that the safeguard in respect of the prisoner which has already been relaxed in the case of Magistrates, may, at least with equal safety, be relaxed in the case of Sessions Judges. In that case provision may, I think, be made for the conviction by a Sessions Court of an old offender upon evidence which the Sessions Judge has not had the advantage of hearing.

Considering the very questionable nature of the evidence which, as my experience leads me to believe, is produced against old offenders, and the too great readiness to accept it shown by many Magistrates, considering also that old offenders are generally undefended and little able to defend themselves, it seems to me that the Legislature will be well advised if they pause before taking from these people, who are most in danger of being falsely charged, their greatest safeguard against the success of a false charge, namely, the safeguard afforded by the opportunity which the Judge now has of observing the demeanour of the witnesses. It was probably to provide against a miscarriage of justice in this direction that the Madras High Court, in paragraph 8 of their letter printed with the Government Order now under reply, suggested that the Sessions Court should be at liberty in such cases to make or direct such further inquiry as it thinks fit, and should be bound to hear the offender.

8. The general result is that I am of opinion that a Bill on the lines of the Punjab draft should be passed; that effectual measures should be taken to prevent the new law becoming an engine of oppression in the hands of the subordinate police; that steps should be taken, by requiring the submission of a periodical return, to secure a more effectual check on the Magistracy as regards the manner in which they deal with old offenders; and that Sessions Judges should be empowered, subject to the safeguard suggested by the Madras High Court, to deal with old offenders in the same way as Magistrates are empowered to do under Section 349, Criminal Procedure Code.

From A. T. ARUNDEL, Esq., District Magistrate, Kistna District, to the Chief Secretary to Government,—No. 193, Extra, dated the 18th January 1890.

I have the honour to reply to G.O. No. 1074, Judicial, dated 24th June 1890.

2. The first observation I would make is that, so far as this district is concerned, the application of the Criminal Tribes Act (XXVII of 1871) is essential. The letter of the Government of India refers to this "effectual method" of dealing with criminal tribes, but it is a method in force only in the North-West Provinces, Punjab, and Oudh, and subsequently in Bengal. Not long after my arrival in this district in 1887, the experienced Deputy Magistrate, now Rao Bahadur Suria Row Naidu, called my attention to the pressing need there was for the introduction of the Criminal Tribes Act, and the Superintendent of Police, Mr. Prendergast, urged on me the same necessity. I did not feel, however, that I then had sufficient knowledge to justify an opinion in favor of fresh legislation.

3. After an experience of three years in this part of the country, I readily avail myself of this opportunity to support the views then brought forward. The jungles and wild places of the district are haunted by gangs of Yerukalas, Yanadies, Lambadies or Brinjaries, Maidus or Dasaris, who move away into neighbouring districts or to the Nizam's Dominions when kept under close watch, but return again when the coast is clear.

A few of these gangs take to lawful pursuits, but most of them are habitual criminals, utterly irreclaimable by any methods at present at our disposal. The adult males are the active marauders, and are difficult to find, still more difficult to arrest. The women, children and old men are often to be found temporarily encamped near a village, making a pretence of mat weaving, while they acquire information or otherwise carry out the designs of the men.

4. I would, therefore, urge upon Government the need that there is for the extension of the Criminal Tribes Act to this Presidency. The peaceable and well-disposed of the community require a protection in this matter that our laws do not at present afford, and they are frequently driven by fear of murder or outrage to withhold all information and even to protect and aid the marauders they most dread.

5. With regard to the draft Bill for the surveillance of habitual offenders, it would form a valuable aid towards prevention and detection of crime which is much needed. Our desire to prevent the conviction of the innocent tends strongly to secure the escape of the criminal; witness the restrictions on confessions, embargo on prosecution by certain police officers, etc. The strict control, therefore, of the habitual criminal is the more necessary and can be the less objected to.

6. The increasing tenderness for the individual which often leads Magistrates to give absurdly light sentences for grave crime is shown also in reluctance to work the provisions of the Code of Criminal Procedure for giving security for good behaviour. There is no doubt

also the feeling that it is anomalous, if not unfair, to seize on one or two isolated criminals and fall on *them* to give security for their good behaviour, while the whole class of habitual ofcenders is practically left untouched. The existing provisions are regarded as more naturally applicable to suspected strangers than to known criminals of the locality. Section 3, therefore, of the draft Bill promises a useful power. It should be provided that the order of the Court or Magistrate may be passed at any time, and not merely at the close of the trial.

7. The provisions of Sections 10 and 11, relating to village magistrates, watchmen and certain residents, are also of much importance, and will enable the Magistracy and the Police to exercise an authority in such matters that is greatly needed.

8. Section 12 of the Bill for levying compensation from a locality for losses caused by certain crimes is not needed in any part of this Presidency that I am acquainted with.

9. With regard to the closing paragraphs of the Government of India letter, there is no doubt that the provisions of Section 75 of the Indian Penal Code are but little regarded, and that the punishments imposed for convictions after the first are often most inadequate. The suggestion that a Sessions Judge may be empowered to pass sentence on a conviction by a Magistrate where the prisoner seems to be a habitual criminal may well be adopted, but I question whether it will be widely employed. The similar power now in the hands of 1st class Magistrates is not largely used. The Subordinate Magistrates have a reluctance to refer such cases, and the 1st class Magistrate will not have the same confidence in sentencing as if he had tried the case himself. The same considerations will apply with greater force to the Sessions Judge.

From Colonel C. A. PORTEOUS, Acting Inspector General of Police, to the Chief Secretary to Government,—C. No. 28, dated the 1st September 1890.

As ordered by G.O. No. 1074 (Judicial), dated 24th June 1890, I have the honour to submit my opinion on the draft Bill for the more effectual surveillance and control of "Habitual offenders." I have very few observations to make, and these are strongly in favour of the Bill.

2. The provisions of the Code of Criminal Procedure being so inadequate, the proposed Bill supplies a long and much-felt want, and will go far towards enabling the Police to hold in check their habitual offenders. It is practically an extension of the Criminal Tribes Act to selected individuals; but its *effectiveness* must depend to a great extent on ***Magistrates*** and the manner in which they exercise their *preventive* powers. At present they (especially the subordinate Magistracy) act too much as *Judges*, ignoring their *preventive duties*. Village officers, too, must be held responsible that the rules laid down in Sections 10 and 11 of the proposed Bill for their guidance are strictly complied with.

3. Known depredators (habitual offenders) and suspects are already registered in large numbers by the police of this Presidency, and a watch is supposed to be kept on them; but this watch is more nominal than real. It will be well to have such surveillance legalized and made really effectual.

4. The Bill will not enable us to deal effectually with those two powerful and notoriously predatory castes—the Maravars and Kallers of Tinnevelly, Madura, and Trichinopoly—from among whom so many of our worst criminals spring; but under an energetic Magistracy, the provisions of the Bill should have a wholesome effect even on these troublesome characters.

5. At present, habitual offenders are very often far too leniently treated by the Magistracy; the proposal to transport them to the Andamans seems an admirable one.

No. 1866, dated the 22nd November 1890.

Order thereon by the Government of Madras.

The Government of India will be addressed.

BOMBAY.

From W. LEE-WARNER, Esq., Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 3265, dated the 17th June 1891.

I am directed to reply to your letter No. 1—419, dated the 31st May 1890, (1) forwarding for the opinion of this Government copy of a Bill for the surveillance of habitual criminals, (2) referring to the necessity for a more frequent use of Section 75, Penal Code, and (3) inquiring the opinion of the Governor in Council on the proposal of the Madras High Court that

in the case of habitual criminals Magistrates should be empowered to enter a conviction and refer the case to the Court of Session for an adequate sentence, just as Magistrates of the 2nd and 3rd classes now refer to District Magistrates under Section 349 of the Criminal Procedure Code.

2. With reference to the draft Bill I am directed to forward a *précis* of the opinions of the various officers consulted by this Government, from which the Government of India will perceive that the most experienced district officers agree in thinking that an effective control of habitual offenders cannot be obtained without legalising the roll-call system for the surveillance of unconvicted bad characters who will not be reached by the Bill, but who form the classes from which the habitual offenders in our jails are recruited. As the Government of India has already expressed in its letter under reply, and on previous occasions, its objections to the roll-call system, the Governor in Council, I am to say, does not think it proper to again tpress the subject on its attention, while at the same time he feels it to be his duty to make the Governor General in Council aware of the views held by the majority of responsible officers in this Presidency. The Governor in Council would, however, urge that at least this opportunity should be taken to restore in full to the Criminal Procedure Code the powers of restraining persons of ill repute given to Magistrates by Sections 505 and 506 of Act X of 1872.

3. With regard to the Bill, I am to state that the principle of surveillance over habitual offenders is fully approved by this Government. His Excellency in Council, however, considers that the term of surveillance should, as a rule, be limited to a period equal to that of the substantive sentence of imprisonment passed on the offender for his last offence, and should form part of the sentence. With these precautions surveillance might be prescribed or permitted in cases of re-convictions under Chapters VI (offences against the State), VII (offences relating to the Army and Navy), VIII (offences against public tranquillity), XII (offences relating to coin and stamps), XVI (offences against the human body), and XVII (offences against property); or in cases of re-convictions for attempts to commit these offences. It should be within the competence of District Magistrates to release offenders from surveillance, as they can now, under Section 124 of the Criminal Procedure Code, discharge from imprisonment in default of finding security for good behaviour. Regarding Section 12 of the Bill, which attempts to achieve the same object as was sought by Section 37 of Bombay Regulation XII of 1827, the Governor in Council is of opinion that such a provision may prove highly useful when judiciously applied; but he would prefer that power should be given to the District Magistrate to discriminate, not merely as to "the respective means of each inhabitant," but so, where this is possible, between the innocent and the guilty in the manner allowed by Section 25 (2) of Bombay Act IV of 1890.

4. With regard to the more extensive use of Section 75 of the Penal Code, I am to remark that, although this Government concurs in the opinion that it is desirable, still there are several reasons which militate against frequent resort to the Court of Session; the principal being the experience of Magistrates that the loss of time and extra trouble thrown on complainants and witnesses induce them to withdraw on compromise, and that the chances of ultimate acquittal are, partly in consequence of the above, much greater than in a Magisterial trial. The Governor in Council will, however, communicate the views expressed in the 5th paragraph of your letter to the High Court and to all judicial officers, and will take measures to cause the advantages of a sentence of transportation to be more generally recognised.

5. Turning to the suggestion in the 6th paragraph of your letter, I am to say that since the Government of India, in their letter No. 397, dated the 28th May 1890, have intimated their unwillingness to extend the jurisdiction of Magistrates' Courts in the manner proposed in my letter No. 2836, dated the 28th May 1889, the Governor in Council approves of the suggestion that, in cases which become cognizable by the Court of Session under the circumstances described, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence.

Précis of the opinions of the officers consulted by the Bombay Government on the draft Bill for the surveillance of habitual criminals.

HIGH COURT.—*The Honourable Mr. Justice Candy* states that a great deal will depend on the rules to be made by the Local Government (*vide* Section 7 of the Bill), and that, until they are open to criticism, it is not much use considering whether the proposals in regard to surveillance are feasible. The other Judges have not recorded opinions on this subject.

SIND.

In Sind opinions are about equally divided as to the value of the Bill. The Acting Commissioner, Colonel Trevor, who also writes as District Magistrate, Hyderabad, thinks the Bill would be of no use because the police would have no time to look after criminals under surveillance, and there are no village establishments. Mr. Steele, another District Magistrate, thinks that surveillance will be impossible with a partially nomadic population; but somewhat qualifies this opinion by adding that "something should be done in connection with the roll-call system." The District Magistrate, Shikarpur, considers that surveillance is only wanted in towns, and that, as a rule, Chapter VIII, Criminal Procedure Code, is sufficient. On the other hand, the District Magistrate, Karachi, thinks the Bill excellent, but fears that the police will not be able to work it unless increased. He, however, proceeds to meet this objection and that of the Commissioner in Sind by remarking that the great zamindars practically supply the place of village officers. The District Magistrate, Thar and Parkar, also approves of the Bill with certain modifications. He is anxious that imprisonment in default of giving security under Chapter VIII, Criminal Procedure Code, should not be abolished, and suggests that in Section 6 it should be enacted that the Magistrate need not take evidence under Chapter VIII in commuting surveillance into security. Mr. Kennedy, District Superintendent of Police, Karachi, seems to approve of surveillance, but to think it quite beyond the power of his police to work.

With regard to Section 12, the District Magistrates, Hyderabad and Thar and Parkar, consider it unnecessary in Sind. The Commissioner thinks that, if enacted, it should enable Government to discriminate between innocent and guilty parties. The other District Magistrates have not referred to it. On the subject of appeals the Commissioner in Sind and the District Magistrate, Thar and Parkar, agree that these should lie to the District Magistrate.

PRESIDENCY PROPER.

Northern Division.

The Commissioner, Northern Division, Mr. James, expresses his satisfaction that the "Supreme Government has at last recognized the right of society to be protected against the criminal classes by a more stringent law than at present exists." He would, however, pass the Bill as an amendment of the Criminal Procedure Code, re-enacting also, presumably in Section 110, Criminal Procedure Code, the words which in the older Act (X of 1872) enabled Magistrates to demand security from persons "of notoriously bad livelihood or dangerous characters." Section 4 of the Bill enables a Magistrate to commute security into surveillance, and Section 6 enables him to commute surveillance into security, in both cases with the object of lessening the punishment. Mr. James would enable Magistrates to order security instead of surveillance under Sections 3 and 5 so as to get the offender into prison in default. With regard to Section 12, Mr. James is of opinion that theft of crops or other agricultural produce and of cattle should be included among the offences. In this opinion he is supported by several of his District Magistrates. But, as Mr. James points out, the Bill does not go nearly so far as a legalized roll-call system would, and he is of opinion that it is in consequence insufficient. Some of the most mischievous characters, he observes, have few or no convictions against them, and will not be touched by the Bill, and he would accordingly give the police power to bring before Magistrates all disreputable persons and village loafers, provided that the District Superintendent of Police certified that they should be so brought up. Mr. James does not say expressly what he would have the Magistrates do with these persons. Not only Mr. James, but the majority of the officers consulted, agree that the system of "unofficial supervision" inaugurated by Government Resolution No. 4483, dated the 24th August 1889, fails for want of legal sanction.

Mr. James invites particular attention to the reports of the District Magistrate of *Ahmedabad* and Mr. Quin. Both thoroughly approve the Bill; but the former thinks that the offences in Section 2 should not be limited to those in Chapters XII and XVII of the Penal Code. He does not specify further, but perhaps desires that all offences whatsoever should be included. He recommends that it should be left to Government to confer powers under the Bill on Magistrates. Many other officers advise the limitation of the power to Magistrates of the 1st class. Both the District Magistrate and Mr. Quin dwell with emphasis on the point that the Bill only touches an inner circle of criminals, and that the classes from which the habitual offenders under the Bill are recruited remain untouched, and both suggest Mr. James' remedy of a legalized roll-call for the outer circle worked concurrently with the provisions of the Bill. Mr. Quin describes the difficulties in the way of controlling the outer circle by means of

Chapter VIII, Criminal Procedure Code. The chief is the want of sufficient evidence. As regards Section 12 of the Bill, Mr. Quin thinks that it should be amended to enable the District Magistrate to discriminate, as in Section 25 of our Police Act, between innocent and guilty classes, and this, with little exception, is the opinion of officers in the Presidency proper.

The District Magistrate of *Kaira*, speaking as the representative of a highly criminal district, approves the Bill and Section 12, but, like the above officers, urges the legalization of the roll-call as well. He considers Chapter VIII, Criminal Procedure Code, unworkable.

The District Magistrate, *Panch Mahals*, approves the Bill, but would include as habitual offenders all the classes named in Government Resolution No. 4483, dated August 24th, 1889. This Magistrate does not consider Section 12 as good as Section 25 of the District Police Act, which enables Government to impose punitive posts. But as another Magistrate points out, punitive posts are usually inflicted for violent crime, and they only punish the guilty and do not compensate the injured as Section 12 provides.

The District Magistrate of *Broach* would narrow the definition of habitual criminal by requiring *three* convictions, and would only legalize the roll-call in villages with a specially bad record.

The District Magistrate, *Surat*, approves of the Bill only because it has not the harshness of a legalized roll-call, and because Section 4 mitigates the severity of Section 110, Criminal Procedure Code. He thinks that Section 12 is not wanted in Surat, but he has not sent the opinion of his District Superintendent of Police on this point.

Central Division.

The Commissioner, Central Division, approves of the Bill, with the exception of Section 12, which, he thinks, will tend to lessen police responsibility and is unsuited to the procedure of a civilised nation. Mr. Grant thinks that no appeals against orders of surveillance should be allowed, as these orders are not penal. He would insert a provision allowing a Magistrate to discharge from surveillance, on the analogy of Section 124, Criminal Procedure Code.

The District Magistrate of *Satara* approves generally of the Bill, but would limit a habitual offender to one who had been actually sentenced to enhanced punishment under Section 75, Penal Code. In order that the latter power might be exercised with greater frequency, he would confer it on District and Sub-Divisional Magistrates. He and his Assistant, Mr. Snow, think that Section 5 should not be made restrospective, and that Sections 10 and 11 impose duties beyond the scope of the "ill paid and uneducated" village police. Both object to Section 12, and prefer Section 25, District Police Act. Mr. Snow would also soften the Bill by diminishing the term in Section 3 to five years, by cutting the words "removal of contrivances" out of Section 7 (6), by expunging whipping from Section 8, and by diminishing the penalties in Section 11.

The District Magistrate, *Nasik*, approves of the Bill, and would continue the unofficial supervision of bad characters not included in it. He would allow appeals. He thinks Section 12 would be little used.

The District Magistrate of *Ahmednagar* has nothing to say about the Bill, but sends the opinion of his District Superintendent of Police, Mr. Kennedy, who approves the Bill but does not think it goes far enough. This officer would extend Section 110, Criminal Procedure Code, as recommended by Mr. James, and makes the suggestion that District Superintendents should be empowered to demand security, as they know both their own men and the bad characters better than the Magistrates.

The views of the District Magistrate of *Khandesh* (Mr. Loch) approximate to those of the Northern Division officers. He approves of the Bill, power under it being confined to 1st class Magistrates,—lower class Magistrates to refer cases. He considers that there should be no definition of habitual offender, but that District and Sub-divisional Magistrates should be empowered to declare any person a habitual criminal, and that the Bill should provide for the control of criminal tribes. He would allow appeals to the ordinary appellate authorities. This is against the opinion of most other officers, who would allow appeals, if at all, to the District Magistrate; Mr. Loch is satisfied with Section 25, Bombay Act IV of 1890, and thinks Section 12 of the Bill unnecessary.

The District Magistrate of *Sholapur* would narrow the definition of habitual offender like the District Magistrate of Broach, and would confine power under the Bill to First Class Magistrates. He forwards a report of his District Superintendent of Police showing the necessity for legalizing the roll-call, if it is to be kept up.

Southern Division.

The opinions from the Southern Division resemble those from the Northern Division in most cases. Mr. Keyser, the Commissioner, approves the system of surveillance, but, like

Mr. James, finds it does not go far enough. He would widen the definition in Section 2, so as to include all the criminals described in Government Resolution No. 4483. He quotes his experience of the Kolis of the Ghâts as showing that very mischievous classes will not be touched by the Bill. He does not think that the number of criminals thus included will be at all unmanageable. He would allow appeals to the District Magistrate. Section 12, he considers, is too limited in its reference to offences, and he would include offences under Sections 395, 430, 431 and 434, Criminal Procedure Code.

The District Magistrates of *Belgaum, Dharwar, Kanara* and *Ratnagiri* all approve heartily of the system of surveillance; but the last two do not approve of Section 12 for their districts.

The District Magistrate of *Belgaum* thinks that Section 12 ought not to discriminate between innocent and guilty, as the levy of punishment on all makes the innocent interested in repressing the guilty.

The District Magistrate of *Kanara* would widen the scope of the Bill by leaving it to the Magistrate to determine whether an offender was a habitual or not, in order that control over all mischievous persons may be retained.

The District Magistrate of *Bijapur* is against the Bill, as he is of opinion that there are few habitual criminals in his district.

The only opinion received from *Kolába* is as regards Section 12, which the District Magistrate thinks should certainly discriminate between innocent and guilty.

The Inspector General of Police thinks the proposed legislation very necessary. He, however, agrees with many of the Commissioners and District Magistrates in pressing for the legalization of the roll-call, and forwards a copy of printed rules drawn up by a Committee in 1886, which he desires should be issued as rules under the Bill. A copy of these rules is printed as an enclosure to this précis.

ENCLOSURE I.

Village Roll-Calls.

1. Village Roll-calls shall be taken daily at uncertain hours between sunset and sunrise by the Police Patel.

2. A register of all persons liable to attendance at the roll-call shall be kept by the Police Patel. The register may be scrutinized by any Police Officer above the rank of Constable.

3. No person liable to attendance at the Village Roll-call may leave his village without a written permit from the Police Patel. The name of the place to which the person mentioned in the permit is proceeding shall be shown therein. The Police Patel of such place shall endorse on the permit the time of arrival and departure of the bearer, who shall on his return deliver it up to the Police Patel of his own village.

4. No person liable to attendance at the Village Roll-call may leave his village for more than 7 days without a written permit from the officer in charge of the Police post to which his village is subordinate.

5. No person liable to attendance at the Village Roll-call shall permanently change his place of residence without the permission of the District Superintendent of Police.

6. Any person other than an habitual criminal whose name is entered on the roll-call register who has borne a good character for a period of two years, and is earning an honest livelihood, may have his name removed from the register by the District Superintendent of Police on a report from the Police Patel through the Chief Constable of the taluka.

7. No person's name shall be entered in, or removed from, the roll-call register without the sanction of the District Superintendent of Police.

8. The following persons shall be required to attend the Village Roll-call:—

(1) All males above 10 years of age of the criminal castes, such as Mangs, Bhils, Bhamptas, Kolis, Ramoshis, and Kaikaris, unless they are certified by the Police Patel to be persons of good character, and are excused attendance by the District Superintendent of Police.

(2) All released convicts of whatever class or caste who have been convicted of house-breaking, dacoity, robbery, mischief by fire, cattle poisoning, theft of valuable property, or who have failed to give security for good behaviour.

9. In addition to attendance at the Village Roll-call, such released convicts shall be required to report themselves at the nearest Police post twice a month. Lists of released convicts shall be kept at the Police stations within the limits of which the convict resides. They will be carefully scrutinized by the District Superintendent of Police and Assistant Superintendent of Police on their tours.

10. All persons who have been convicted more than once of any of the offences specified in Rule 8, Clause 2, shall be considered habitual criminals. In addition to attending the Village Roll-call they shall report themselves weekly at the nearest Police post, and shall also be liable to attend at the Police post whenever sent for by the officer in charge of the post. A separate list of habitual criminals shall be kept at the Police stations, and any name entered therein shall not be removed before the expiration of five years, and then only by the District Magistrate on the recommendation of the District Superintendent of Police.

11. Any person referred to in Sections 8, 9 and 10 who may refuse to attend the Village Roll-call or to report himself at the Police post, shall, for the first offence, be punished by the Police Patel under Section 14 of Act VIII of 1867, Village Police Act. For any subsequent offence he shall be punished under Section 188 of the Indian Penal Code.

12. Any person considering that his name should be removed from the roll-call register may appeal to the District Magistrate, whose orders thereon should be final. All habituals should be photographed as far as possible.

Register of Persons of Suspicious and Bad Character residing in Villages within the limits of Outpost who are required to attend the Village Roll-calls.

Names of Suspects and Bad Characters.	Reason why entered on Roll-call.	If ever convicted or prosecuted, particulars of offence.	Name of Village of which a resident, and date from which he has resided there.	Occupation, if any.
1	2	3	4	5

Register of Habitual Criminals.

Name.	Age and descriptive Marks for identification.	Particulars of convictions or prosecutions.	Name of Village of which a resident, and date from which he has resided there.	Occupation, if any.
1	2	3	4	5

Extract from the Proceedings of the Government of Bombay, Judicial Department,—No. 4483, dated the 24th August 1889.

Read again—

Resolution of Government in the Judicial Department, No. 3, dated 3rd January 1887—Regarding the instructions issued by the Government of India on the subject of measures for the recognition of re-convicted prisoners and the definition of the term "habitual criminal."

Read—

Letter from the Inspector General of Police, No. 2434, dated 8th April 1889.

Memorandum No. 1421, dated 24th March 1887, of the Inspector General of Police.
Letter No. 2645, dated 9th June, 1887, from the Inspector General of Police to the Commissioner, C. D., with accompaniments.

Forwarding, with reference to this Department letter No. 1652, dated 26th March 1889, copy of the papers noted in the margin, on the subject of the registration of criminals, and stating that his suggestions were submitted to Government for incorporation in the new District Police Bill.

RESOLUTION.—In his review on the Annual Report on the Jail Administration for the year 1888, the Governor in Council observed:—

"The total number of re-convicted prisoners admitted into jails in 1888 was 2,125 against 2,007 in 1887, or 13·9 per cent. of the whole, against 14·7 in the previous year. Of these, 1,918 were admitted into Central and District Jails against 1,840 in 1887. Out of this number 1,918, 1,260, or 65·7 per cent. only were identified before trial. The percentages in 1887 and 1886 were 73·6 and 65·5. The identification of previously convicted persons before trial is a matter of great importance, and one that demands the earnest attention of the Police and Magisterial authorities. The falling off in the proportion identified before being sent to trial is unsatisfactory. It would seem, however, that the orders of the Government of India, distributed with Government Resolution No. 3, dated 3rd January 1887, Judicial Department, are understood and carefully worked by the Jail authorities; and that the defect noticed is due to laxness on the part of the Magistracy and Police. The attention of Magistrates was again called to this matter by Government Resolution No. 5974, dated 2nd November 1888, Judicial Department, and, in so far as it is a question of Police administration, it is being separately dealt with by Government."

2. The success of the police in identifying previously convicted prisoners must very largely depend on the efficacy of the lists of suspected persons maintained at the several police posts. It is abundantly proved from the papers submitted to Government by the Inspector General of Police that at present these lists are of little practical value. They contain the names of many persons who were convicted of trifling offences, and who cannot properly be regarded as in any way dangerous or suspicious characters. The lists thus swollen in bulk become for all practical purposes unintelligible or unmanageable.

3. To remedy these shortcomings, the Governor in Council is pleased to direct that the lists shall contain no other than the names of persons of the following classes:—

(*a*) released convicts who have been convicted of dacoity, robbery, house-breaking, theft of property exceeding in value one hundred rupees; mischief by fire or cattle poisoning; or of abetting or attempting the commission of any of these offences.

(*b*) persons who have failed to give security under Section 109 or 110 of the Code of Criminal Procedure, 1882, but have been released from imprisonment on account of such failure under Section 124 of the said Code.

(*c*) male persons above ten years of age belonging to any tribe, gang or class addicted to the commission of non-bailable offences;

(*d*) persons convicted of the offence of receiving stolen property;

(*e*) persons convicted of any crime of violence or fraud and sentenced to two years' imprisonment or more.

The names of persons in classes (*a*), (*b*), (*d*) and (*e*) should in all cases be entered on the lists. As regards class (*c*), it is difficult to lay down any distinct rule; the District Superintendents of Police should use their discretion in the matter, it being borne in mind that it is most undesirable to enter names unnecessarily.

4. It does not appear desirable to the Governor in Council to fetter the executive action of the police by laying down any hard-and-fast rule regarding the period for which names should be retained on the register. But as a general indication of policy it may be observed that in the case of convicted persons the names should be retained on the register after the expiry of imprisonment for a period not less than the term of imprisonment imposed.

5. The annual reports of the District Superintendents of Police should state the means adopted by them for keeping known or suspected offenders in check, and for sending useful information after any suspect who changes his place of abode.

6. It must not be forgotten that Chapter VIII of the Code of Criminal Procedure affords a means for keeping habitual offenders and persons of evil habits in check. The effective working of this chapter rests, in the first instance, with the Police and not with the Magistracy.

2. The first subject dealt with is the surveillance of habitual offenders, and a Bill has been circulated, which has been submitted by the Punjab Government, providing for the control of such offenders, and also for the prevention of special acts of mischief, such as cattle-poisoning and arson.

3. The Committee desire to observe that there does not appear to be any necessary connection between the first eleven sections of the Bill, which have reference to surveillance, and the twelfth section, which relates to mischief, and they are of opinion that there is nothing in the circumstances of this province which appears to call for such special legislation as the Punjab Government propose on the latter subject. They would, therefore, suggest that the two portions of this Bill be separately enacted, the portion relating to cattle-poisoning and arson to be capable of being extended on the application of any Local Government which may desire to enforce it in its own territories.

4. The Committee regard the surveillance of habitual criminals as one of the most important duties that a police has to perform. That duty is by no means lost sight of at present in Bengal, surveillance being exercised not only over persons who have actually been convicted of offences against property, but also over suspicious characters. The objects of surveillance are at present classified for police purposes as follows :—

(*a*) Men to be inquired after from time to time.
(*b*) Men to be watched.
(*c*) Men to be watched closely.

The first class are inquired after at least once a year; the second are looked up once in two, four or six months, as circumstances may require, and the third are ordinarily looked up once a month. The total number of persons under surveillance in Bengal in the year 1889 was 42,812, of whom 39,198 were men who had been convicted or ordered to furnish security for good behaviour.

5. Though much is already being done, the system can undoubtedly be worked more successfully than at present if it is formally legalised and if a sanction is provided to enforce it The surveillance for which the Punjab Bill provides appears to be of an effective kind, and it provides for the punishment of an offender under surveillance in case of his breaking rules, as well as for the punishment for breach of duty of those who are responsible for giving information about the offender's movements.

6. The Committee consider that all the provisions of the Bill as regards surveillance appear to be very salutary, and they are especially in favour of Section 4, which empowers a Magistrate to pass an order of surveillance in default of furnishing security for good behaviour instead of detaining the defaulter in prison.

7. With regard to the suggestion of the Commissioners who recently visited the penal settlement of Port Blair that the punishment of transportation for life is especially appropriate to the case of those who habitually commit offences against property, the Committee notice that the Hon'ble Judges of the High Court of Calcutta have, in their letter No. 2838 of the 16th September 1890, to the Government of India, pointed out that that punishment is the maximum provided by law for such offences, and that it is, therefore, contrary to the spirit and intention of the law that it should be awarded, except in the gravest cases. A further objection of a different nature would seem to be that, if recourse were had widely to this form of punishment, there would probably arise a difficulty in providing accommodation for the largely increased number of persons who would be sentenced to transportation. Again, it would seem that the Commissioners contemplate the return of the life convict after 20 or 25 years passed in transportation. The Committee cannot but fear that, however salutary might be the effect of the system which is described in the third paragraph of the report of the Commissioners in promoting the reformation of individual criminals,it would seriously detract from the deterrent effect of a sentence of transportation for life as regards the general public that the returned convict should be in a position to spread about the information that after ten years of penal labour a convict under such a sentence attains the status almost of a free person within the settlement, living a domestic life, cultivating the soil, and earning money by trade, service, or agriculture. The Committee venture to think that if the punishment of transportation as it is described by the Commissioners is to be really deterrent, no sentences should be passed for a less period than life, and a life sentence should be what the term literally implies.

8. It appears to the Committee that the most important points in dealing with previously convicted offenders on re-conviction are—

(i) that great care should be bestowed on their identification and the ascertaining of their antecedents before the trial;

(ii) that the Court should ordinarily award sentences of progressive severity on each re-conviction;

(iii) that the jail authorities should render the imprisonment of such offenders so severe as to make it really deterrent.

9. The Committee are satisfied that much progress has already been made towards securing that the career of old offenders shall not escape notice when they are sent up again for trial. Under standing orders, every police officer sending an accused person up for trial is required to certify that he has examined his register of convictions and has in all respects made full inquiry whether the accused has been previously convicted. The Court police officer is also required in every case to search the index to the conviction register for the same purpose, and to certify that he has done so.

10. It is unfortunately the case that instances of inadequate punishment of previously convicted offenders occasionally occur, but there seems to be no doubt that they are gradually becoming more and more infrequent. The Inspector General of Police devotes close attention to this subject. He receives quarterly returns of the sentences passed on such offenders, and brings to the notice of the Commissioner concerned any case tried by a Magistrate in which the punishment awarded appears to be manifestly insufficient.

11. There is no similar check on Sessions Judges, and the Committee would suggest that the co-operation of the High Court might with advantage be invited. At the close of each Sessions a statement is submitted by the Judge to the High Court showing certain particulars with reference to every case that has been tried at the Sessions. If the High Court would require that in that statement the number and particulars of each previous conviction should be shown against every case tried under Section 75 of the Indian Penal Code, they would be in a position to form an opinion as to the propriety of the sentence passed, and would, doubtless, call for explanation if it appeared, *primâ facie*, to be inadequate.

12. With respect to the question whether the punishment actually undergone by old offenders after conviction is sufficiently severe, the Committee think that they can scarcely do better than quote from an extract which accompanies the letter of the Government of India from the report of the Commissioners who inspected the penal settlement of Port Blair, one of whom was the Inspector General of Jails, Bengal. Speaking of habitual criminals, they say:—"They are rarely at large for more than a few weeks before they find their way back to prison, and it is clear that confinement in our jails has no deterrent effect upon them whatever." Again, the Commissioners say:—"The successive sentences passed in jails show that prison life in India has no terrors for these persons." The Committee cannot help thinking that these facts seem to afford quite as strong an argument for considerably increasing the rigour of imprisonment from the present standard in the case of previously convicted offenders as for substituting the punishment of transportation. The Committee observe that the Government has it in contemplation to try the experiment of confining the more hardened of the class in one central jail which has special facilities for solitary confinement. They are strongly of opinion that wherever such offenders may be confined, they should be subject to specially hard and disagreeable labour and specially severe discipline. The Committee are disposed to think that, if jail life were made as disagreeable as in their opinion it should be, much shorter sentences could be awarded than at present with very much greater deterrent effect.

13. The last subject noticed in the letter of the Government of India is a suggestion made by the High Court of Madras that in cases which become cognizable by the Court of Sessions merely because the accused has been previously convicted and seems to be a habitual criminal, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for adequate sentence on the same principle on which a Magistrate of the second or third class proceeds under Section 349 of the Code of Criminal Procedure. The Madras High Court propose at the same time to give the accused the option of committal to the Sessions, the object being that he should not be deprived against his will of the right to be tried by jury.

14. The High Court of Calcutta, in a letter to which reference has already been made, object to the power of conviction and reference being entrusted to any but the District Magistrate, and they would prefer that the provisions of sections 30 and 34 of the Code of Criminal Procedure should be extended so as to apply to all District Magistrates, as they would then be able to dispose of the cases themselves.

15. We think that the proposal of the Madras High Court to give the accused an option of committal would probably go far to render the suggested alteration of the law as to conviction and reference for higher punishment practically inoperative, for it seems difficult to suppose that a person who is invited to choose between the certainty of conviction in one Court and

a chance, however small, of acquittal in another, with the knowledge that, even if he should be convicted by the second Court, he will still be no worse off as regards the extent of the punishment, would not, in the great majority of cases, prefer to be committed to the Sessions. With this exception the legislation suggested by the High Court of Madras commends itself to us as being likely to ensure that adequate sentences shall be more generally passed in the case of habitual offenders, while great relief would be afforded to complainants and witnesses. This last consideration would, as the High Court remark, probably tend to diminish the illegal compounding of offences and lead to a larger number of prosecutions in a class of case in which it is highly desirable that the offender should always be brought to justice. We think that the power of conviction, with a reference to the Court of Session, should not be conferred on any but a Magistrate of the first class.

16. There seem to be some practical difficulties in the suggestions of the High Court of Calcutta. Few District Magistrates have at present time to devote to the trial of original cases, though possibly, if the work had to be done, the time might be made by delegating some other duty to subordinates. A more important objection seems to lie in the difficulty of a District Magistrate's disposing of such cases when they occur either within the jurisdiction of an outlying sub-division or during his absence from head-quarters, especially during his annual tour Another difficulty is that the antecedents of accused persons, especially those who reside in other districts, cannot always be fully ascertained before the case is sent up for trial: so that it would not always be known before the commencement of the trial whether the accused had or had not been previously convicted, and therefore whether the case was one for disposal by the District Magistrate himself. These objections would be equally applicable whether the District Magistrate passed sentence himself or entered a conviction and referred the case to the Court of Session.

From A. E. STALEY, Esq., Offg. Magistrate of Sarun, to the Offg. Under-Secretary to the Government of Bengal, Judicial, Political, and Appointment Department,—dated Camp Chupra, the 28th December 1890.

With reference to your No. 4146J., dated 19th instant, to me, I have the honour to submit the opinion asked for.

2. The following matters are dealt with in the papers forwarded to me :—

I.—The surveillance of habitual offenders.

II.—The improvement of the law of security.

III.—The infliction of more severe sentences than hitherto under Section 75, Indian Penal Code, on habitual offenders re-convicted.

IV.—The better repression of the offence of mischief by the assessment of compensation on localities where it occurs.

3. *I. The surveillance of habitual offenders.*—The Government of India,* after noticing the insufficiency of the provisions of the Criminal Procedure Code as to obtaining security from persons of bad character, propose that surveillance should be instituted over criminals whom there is reason to believe habitual, that the supervision which in some places does exist over such criminals should be legalized. The Government of India suggest the maintenance of a secret register to be maintained for the information of the police, and that domiciliary visits to ascertain if suspected characters, or at all events persons placed under police supervision in due course of law, are at their homes should be legalized, and perhaps similar precautions taken to prevent excursions to commit crime.

* *Vide* paragraph 3, No. 1—420, dated 31st May 1890, Home Department / Police.

4. There can be no doubt that the working of the bad livelihood provisions of the Criminal Procedure Code is not satisfactory. Courts, especially courts of appeal, do look closely and suspiciously at evidence merely of repute, especially when, as in most cases, there is rebutting evidence of repute on the side of the accused, and the evidence against the accused shows that he is being prosecuted on repute for offences of which he has already been acquitted on direct evidence.

5. The surveillance under police rules now exercised by the police is, I believe, more effective. Under Chapter XVI, Police Manual, Sections 35 and 36, officers in charge of police stations are bound to keep a general surveillance over all released convicts in their jurisdiction, and without inquisitorial inquiries to ascertain if he is leading a life of crime. Persons whom a convicting court directs, and unconvicted persons whom the District Superintendent of Police directs to be entered, are entered in a register called No. XV, "Register of persons under police surveillance." After entry on this register these persons are divided into three classes—

(*a*) those to be enquired after from time to time.

(b) those to be watched.

(c) those to be watched closely.

6. This surveillance, that is, its effectiveness, is dependent on the character of the superior police officers. When it is thorough there can be no doubt that it is strongly repressive of crime against property, to which it is almost, if not entirely, confined. The Domes and Chain Noniahs of this district, who are hereditary thieves, have been cowed by it. They are separately registered and constantly watched. The surveillance is enforced by means of the bad livelihood provisions of the Criminal Procedure Code effectively against these people. When it is proved that one of them has absented himself from home at night, and he fails to give an account of himself, every court presumes that he has been away on a thieving expedition. The total number under surveillance in this district at the close of 1889 was 2,159, but of these 259 were in jail. There were 167 persons brought under surveillance during the year.

7. I do not see what advantage would arise from legalizing, that is embodying in law, surveillance over habitual criminals under Chapters XII and XVII, Indian Penal Code, unless and except so far as it be extended so as to restrain them under passes to limits of residence. The present system is not contrary to law, though it is not directly authorised by law. It is or can be made very effective. If the term "habitual offender" for the purpose of surveillance be confined to a person convicted on several occasions of offences under Chapter XII or XVII, Indian Penal Code, as the Punjab Government propose, a very large number of persons will be released from surveillance, including most of the Chains, who ought to be under it. At present a Magistrate judges from the nature of the case whether an offender is or is not an habitual offender. For instance, a railway cut-purse with the knife used in his profession would be ordered under surveillance; while a cultivator who had sometimes taken an armful of sprouting crops to feed his cattle would not I think the less the legislature attempts to define the surveillance of the police the better. Chapters XIII and XIV of the Criminal Procedure Code give the fullest authority to the police to prevent and procure evidence of offences, and to restrain offenders and suspected offenders. I think it will be a mistake if an attempt is made to define their powers of surveillance, which are now included in their powers of preventing offences and restraining offenders, by strict definition.

8. At the same time it would certainly be an advantage and would extend the preventive action of the police if offenders suspected to be habitual could be restrained under passes to reside within certain limits, as the Punjab Government have proposed. This is, however, a power which might be given to a Magistrate of the first class under the Criminal Procedure Code without a special law on the subject. There is no doubt that some such provision is needed. At the close of last year here there were 236 persons out of 1,900 living outside jail under surveillance, whose residence and whereabouts were unknown. This represents a percentage of 12½ per cent. and more untraced. These being wandering persons were, it is most likely, the more habitual criminals. The proposals of the Punjab Government leave it open to the Local Government of each province to prescribe rules as to limits of residence and passes. This is a wise provision.

9. The amendments I would propose in the Punjab Government's Bill are as follows:—

(a) The term "habitual offenders" should not be confined to persons *convicted* on several occasions of offences under Chapters XII or XVII, Indian Penal Code. It should be left to a Criminal Court to decide from the nature of each case whether there is reason to believe an accused to be an habitual offender under Chapter XII or XVII, Indian Penal Code.

(b) The provision for limitation of residence by rules of Local Governments to be embodied in the Criminal Procedure Code, with penalties proposed, instead of being enacted by a separate Act introduced into the Indian Penal Code. The present system of police surveillance to be left untouched otherwise.

(c) No court below that of a Magistrate of the first class to have the power of applying the rules as to limited residence. The order should be appealable to the court to which appeals lie. I do not understand why the powers should not be allowed to Sessions Courts over criminals tried before them. A Sessions Court having the prisoners and witnesses before it and going thoroughly into the case is in a much better position to judge whether he should be kept under surveillance after release than the District Magistrate. But the latter, having the police under him looking after the convict's behaviour after release from prison, and being able therefore to judge whether he can with safety be released from surveillance, should always have the power of releasing from surveillance, no matter under whose orders.

10. *II. The improvement of the law of security.*—The proposal of the Punjab Government is that a provision should be added to Section 123, Criminal Procedure Code, that in default of security for good behaviour being rendered when ordered, the court of a District Magistrate or specially empowered Sub-divisional Magistrate may direct the accused to be subject to surveillance for a term which may extend to five years; that during this period the accused person should be permitted to offer security, which the Magistrate should, but for special reasons to be recorded, accept, but the bond should in such case bind for the period for which the order of surveillance was given till its expiration.

11. It is obvious that such a provision will give to Magistrates a very much greater power than they at present possess. At present they have only power to call on a man to give security for good behaviour for one year, and on their own authority sentence in default to imprisonment. The proposed provision will enable them to confine persons to limits of residence for five years, on mere repute, in addition to their former powers. I do not think that such a tremendous power should be given against subjects anywhere on mere repute of bad livelihood, least of all in this country, where private animosity is so unscrupulous and so fierce that it will strike through its own heart to reach an enemy's. While admitting, as I have done in paragraph 4, that the working of the bad livelihood provisions of the Criminal Procedure Code is not satisfactory, I do not consider that is due to their giving too little power to Magistrates. On the contrary, they give sufficient power to restrain those habitual offenders who are very strongly suspected, though not convicted, if they are properly used. But very often they are improperly used. The evidence taken against a man is not that he is by repute a robber, thief, or receiver of stolen property, but that he drinks toddy, gambles, has a kept woman, spends eight annas a day, is seldom seen to work, and the like, or that he has been twice tried and acquitted of theft, or that he has just been suspected of a murder in the village and so on, and so on. Or, again, in numerous cases a man is immediately after his acquittal, especially on a heavy sessions charge, arrested and prosecuted for bad livelihood, and the police send up witnesses who say that they never heard anything against the man before the sessions case in which he has just been acquitted. If the Magistrate does not in such cases acquit, of course the appellate court must; and so constant are the acquittals in bad livelihood cases that there is not much wonder people are reluctant, if without private animosity, to incur the odium of testifying to a man's bad character. This is not, however, the fault of the provisions of law, but of the way they are worked. They can be made most useful where the evidence is abundant and properly relevant, and I have frequently made them so.

12. *III. The infliction of more severe sentences than hitherto under Section 75, Indian Penal Code, on habitual offenders re-convicted.*—This subject divides into two parts—

(i) Proof that an offender is habitual.

(ii) The operations of the courts in inflicting more severe sentences on habitual offenders.

13. *1.* It seems to me that too little stress has hitherto been laid on the necessity of binding means to identify habitual criminals when brought before criminal courts. Thieves have frequently been brought before me who I am convinced must have been many times previously convicted, who are wanderers and decline to give a true account of their antecedents. After weeks of delay and enquiry nothing is found against them, and they are let off with sentences which seem absurdly small when their antecedents, if ever, become known. It is not the fault of the courts *as a rule* that light sentences are inflicted on habitual criminals. The law requires certain proof of previous convictions, which is not always forthcoming; and if it is not forthcoming the previous convictions cannot be considered. I have nothing to say against these requirements. What is wanted is facilities to satisfy them. Now the means of identifying old convicts are in India, I venture to say, of the feeblest. They are limited, I believe, to (*a*) parade before the *local* police at *local* jails on Sundays, (*b*) accidental recognition by jail and police officers, (*c*) descriptive rolls in *Police Gazettes*. The first two are almost entirely ineffectual. For an offender apprehended in one province after a career of crime in another, they are wholly ineffectual. The descriptive rolls in *Police Gazettes* are insufficient. It involves a great expense of time to look them up. A man's attention must necessarily flag when reading through a great number of separate unclassified items of description. I suppose these police descriptions are of use, as they are kept up. But I have never had a case in which one has been of use in tracing previous convictions of an accused person, and I have had no experience of the use of these descriptions. What is wanted is a plain useful classification of habitual criminals, to which, when an unknown offender is caught, a reference can be made, and it can be at once, or almost at once, ascertained if he is included in it. It is no use trusting to recognition or general description or description of dress, stoutness, and the like things, which are variable. The classification should be based in the case of adults (non-adults need

not be considered practically) by measurements of parts which do not vary; the size of the skull over the head from the junction of ear to ear, the length of the ulna. The sub-classes based on the impression of the thumb, and personal marks. An identical copy of this habitual's roll should be kept at every central jail written up on the order of the Inspector General of Jails, on the instructions of the Inspector General of Police, to whom District Magistrates would supply information. In 1882 or 1883 I wrote to Government advocating the use of the ferrotype process of photography for multiplying identical photos of the faces of habitual criminals, as an aid to the classified list. That is a process which I have frequently seen used in America, where, when a boy, I have often had a dozen photos taken, each the size of a postage stamp, but perfectly distinct, of my face, for the small sum of 25 cents or a shilling. I afterwards ascertained that my proposal had been dropped after reference to a local photographer, if my memory serves me, and without any full inquiry into [the cost of the process or its use for identifying suspected habituals. It is obvious that the saving to Government as well as to private persons would be great if habitual criminals could be more often identified, and that the expense of a simple process of photography (I believe the simplest there is) ought not to be considered.

14. What, I may ask, is the use of multiplying law as to surveillance of habituals if when an habitual offender runs away from surveillance no one away from his home can identify him even if he is caught? That is the state of things at present. There are 236 habituals now on our rolls in this district, who are supposed to be under surveillance, but who are at large in some place unknown, and probably engaged in crime. It would not restrain them to pass a law by which they should be confined to certain limits for residence, when we cannot find them now they have left their place of residence. What is most wanted, considering the improvements in communication, which have facilitated operations of criminals who are in the habit of leaving their homes to commit crimes, is what I have stated in the last paragraph, and without it the proposals referred to in your enclosures will, if carried into effect, be of little advantage.

15. *III.—The operation of courts in inflicting more severe sentences on habitual offenders.*—A number of instances are given in the enclosures of inadequate sentences inflicted on habitual criminals after numerous convictions. But no Magistrate of experience can read the lists of convictions without believing that the subsequent convictions were passed without knowledge of the previous ones, and that the fault did not lie with the convicting court, but with the jail and police authorities, who failed to trace or prove the antecedents of the accused. Very likely the jail and police authorities tried before conviction and failed; why failed? Because of the want of a proper classified roll of habitual criminals, reference to which under the proper heading of measurement would have shown the men wanted, without the long and absurd practice usually in vogue, of trying to get the truth out of a practised liar. It is very rarely the fault of courts, least of all Magistrates' courts, that inadequate sentences are given, nor is there any necessity to give enhanced powers to Magistrates. The Madras High Court proposes that Magistrates should have power to submit cases to the Court of Session for enhanced punishment, offering the accused option of a committal. I certainly think that the first part of the proposal, the offences touched being limited to offences under Chapters XVII and XII, Indian Penal Code, and to courts of Magistrates of the district or of the first class specially empowered by the Local Government, might very usefully be carried out. It would relieve parties and witnesses and the courts of session of much useless trouble, and save Government the expense of many sessions trials. But to give a criminal the option of a committal to the sessions would be to render the provision a nullity in these provinces, where, at least outside the presidency town, to save a man from punishment, even if guilty, is considered a virtue, unless he is of very low caste. No criminal would prefer to be tried by a Magistrate, for assessors and jurymen generally acquit, no matter what the evidence, whereas Magistrates generally convict unless they see reason to doubt the evidence. But the extra powers granted to Magistrates, though having the advantages named, would not serve the main object, *viz.*, an increase in the punishment of habitual criminals. Nor would it be of any use to bring to the notice of judicial authorities (as the Jails Commission propose, *vide* extract in enclosures, paragraph 1) the "special appropriateness of a sentence of transportation for life in the case of persons habitually addicted to offences against property." Sessions courts do and must sentence to transportation for life only if proof required by law is given of numerous or serious offences for which convictions have previously been obtained. If not, the sentence is quashed and the court is censured by the High Court. Here, again, we are thrown back on the necessity of getting identification of our habitual criminals as the basis of all success in dealing with habitual crime.

16. *IV.—The better repression of the offence of mischief by the assessment of compensation on localities where it occurs.*—On this subject the recommendations of the Punjab Government are included in Section 12 of the draft Bill. In my opinion they are very proper, and will, if used with due care, be most useful. There is, I believe, no reason to believe that cattle-poisoning is a crime which in these provinces the inhabitants of any tract or village conspire to commit or conceal. But with the increased demand for hides and bones there is every probability of cattle-poisoning becoming more organized among the Chumars. Of other mischief there is abundance wherever there are disputes between tenants and landlords, and I do not scruple to say that in the present state of the law the police and Magistrates are helpless. A zemindar's cutchery and papers are burnt by tenants who decline to pay any rent whatever. The zemindar gets no compensation, and has to pay for prosecution, witnesses decline to give evidence in court for just fear of having their own property destroyed, the injured party gets no redress, and the men who are well known to have committed the offence, who have threatened to do it publicly and publicly done it, are acquitted, light bonfires and spread the news everywhere. Every Magistrate knows the story.

17. The conditions on which these provisions for prevention of mischief are to be enforced are, as proposed by the Punjab Government, very proper. It is only the Local Government which should have the power to impose them. At the same time I think the provisions themselves require to be extended. Apparently it is only when a great number of offences of mischief have been committed in a tract, so that they can be called "common," that an injured person is to get compensation for further mischief committed after the tract has been notified. But supposing A. B. C. D. E. F. G. H. I. J. are a small minority obnoxious in the village, for their religious opinions, to the majority of the villagers; that the majority burn down the houses of A. B. C. D. E. F. G., and that then the village is notified. Well, even if H. I. J.'s houses are saved, thereby the chief damage is done and no compensation can be given for it. In the case of zemindars, too, before the offences by their tenants could be described as common, the zemindars' property would probably have disappeared altogether. Then there is another fault in this provision. If a majority of the villagers were to fire, say, the whole of their mahajun's property, this would be one offence of mischief, and he could get no compensation, while if they fired a number of his properties piecemeal, of small value, they could be notified and the mahajun get compensation for further property destroyed. So the villagers would do better to commit the greater mischief than the smaller. I would therefore amend the provision to run thus (1):—When it appears to the Local Government that offences under Sections 427, 428, 429, 435 or 436, Indian Penal Code, are commonly committed in any tract of country, or that an offence under any of those sections has been committed in any tract with the knowledge and consent or aid of a large number of the inhabitants of that tract, and that the inhabitants of that tract or any of them keep back information, etc.

2. When any offence mentioned in clause 1 of this section is committed in any tract to which this section applies, the Magistrate of the district may, whether such offence was committed before the issue of the notification or not, make, after issue of the notification, an award fixing the compensation, etc.

From C. C. QUINN, Esq., Offg. Commissioner, Bhagulpore Division and Sonthal Pergunnahs, to the Chief Secretary to the Government of Bengal,—No. 206Ct., dated Camp Kaliachuk, the 30th December 1890.

With reference to your Circular No. 4146J. of the 19th instant, I have the honour to make the following remarks.

2. I am quite in favour of the proposals embodied in the Bill drafted by the Punjab Government as regards the surveillance of bad characters and habitual offenders.

3. The provisions under which security can be required for good behaviour are clearly insufficient to check offences against property in an effectual manner. Security is, as far as my experience goes, seldom furnished, and those who are mainly interested in the successful working of these preventive measures are as a rule not at all anxious that it should be furnished, as they have no confidence that the sureties will exercise any restraining influence over the suspect.

The general result, and the result aimed at by the pelice, is that bad characters are shut up for a year or two, and thus for a time forcibly prevented from following a criminal course.

4. The deterrent effect on the persons concerned is, I think, generally very slight, and there is little ground for expecting that a man who has been sent to jail as a bad character will become a good character on his release.

What is really needed is that habitual criminals and their accomplices, whether convicted or not, should be known, and that they should be effectively watched, and for this purpose

I think that legislation of the kind proposed by the Punjab Government is necessary. Surveillance is no doubt possible, and is now attempted without special legislation, but I think that if it is provided for by law, it is likely to be much more effective, and also to afford much less scope for abuses on the part of the police than where it is exercised outside the law and by recourse to methods which are often illegal.

5. One very essential point is that there should be some legally authorised means of following and controlling the movements of bad characters when they leave their houses. Without this there can be no effective surveillance.

6. In the letter from the Secretary to the Government of India objection is taken to a roll-call of suspected persons. I think that there are valid grounds for objecting to the publication of the fact that certain persons are under surveillance, and such persons should not be subjected to any unnecessary indignity; but much importance is properly attached to making the regular and village police acquainted with the appearance of the bad characters of their own and neighbouring jurisdictions, and this should be provided for, even at the cost of a certain amount of publicity.

7. I think that the police should, subject to proper restrictions, be able to secure the attendance of convicted habitual offenders at police stations for the purpose of inspection and identification, but it is doubtful whether this portion of the rules should be applied to persons who, although under surveillance, have never been convicted of any offence; and it might be desirable to provide for a somewhat modified form of surveillance in the case of such persons.

8. In the Draft Bill power is reserved to the Magistrate to commit a suspect to jail instead of ordering him to be kept under surveillance if he should think it advisable to do so, and I think that this discretion should certainly be retained. It is often desirable, with a view to break up gangs, to entirely remove from all chance of communication with his associates a man who is suspected of being a ringleader or organizer of bad characters, and this can be most effectively done by confining him for a time in jail. I am, however, of opinion that the Magistrate should be empowered in such a case to direct that the suspect should be kept under surveillance for a fixed period after his release from jail, otherwise the worst cases are likely to pass soonest out of control. If this provision were enacted, the period of detention for default might be reduced to a year or six months.

9. As regards habitual offenders, I think that the proposal to empower the Court to direct that they should be kept under surveillance after the expiration of their sentence is an excellent one. The illustrations given by the Commissioners deputed to visit Port Blair go to show that even exemplary sentences have little deterrent effect in these cases, and the reasons for keeping convicted habituals under surveillance after release are certainly as strong as those for exercising supervision over persons who are merely suspected.

10. I entirely approve of the proposal to enable Magistrates to refer cases falling under Section 75, Penal Code, to the Court of Session for enhanced punishment.

The inadequacy of sentences under the present law is largely due to the reluctance of Magistrates to commit persons charged under Section 75, Penal Code, to the Sessions in spite of the provisions of Section 348, Criminal Procedure Code. This has frequently come under my own observation, and when Magistrate of Patna I made more than one reference to Government on the subject.

Judges also not unfrequently object to the commitment of such cases, and an idea that the machinery of the higher Court should not be put in motion unnecessarily, I think, has a tendency in some cases to induce Judges to deal more leniently with the offender than they would do if the case were simply referred fer determination of the punishment. However this may be, the objection of Judges to what they consider unnecessary commitments no doubt prevents Magistrates from committing habitual offenders as intended by the law, and the consequence is inadequate sentences.

11. I also believe that the proposed change in the law in bringing a larger number of these cases before the District Judges would lead to a more frequent recourse to sentences of transportation, which the Commissioners show to be such an appropriate punishment in cases of habitual and hardened offenders.

12. As regards the proposed measures for levying compensation for mischief from the residents of the locality in certain cases, I can only give an opinion from a theoretical point of view, as such cases have not come within my experience; but I think that the principle is sound, and similar provisions have certainly worked well in Ireland. I also think that the condition, that before the application of the section in question the district must be proclaimed in the official Gazette, affords a sufficient safeguard against the improper or hasty recourse to this provision.

From R. F. RAMPINI, Esq., Sessions Judge of Burdwan, to the Chief Secretary to the Government of Bengal,—No. 9, dated the 5th January 1891.

With reference to your No. 4146J., dated the 19th December 1890, forwarding copy of a letter No. $\frac{1}{420}$, dated the 31st May last, and its enclosures, from the Government of India, in the Home Department, and requesting an expression of my opinion upon the subject of the more stringent regulations which it is proposed to pass with regard to the control of habitual offenders in India, I have the honour to say that I consider the provisions of the draft Bill on the subject prepared by the Government of the Punjab to be very salutary, provided a right of appeal be given to all persons against whom any order of surveillance is passed, as well as in every case in which a person is punished, under Section 8, for a breach of the provisions of the Act. I also consider that a person should not be regarded or treated as an habitual offender until he has been at least three times convicted.

I further beg to say that the proposal made by the Madras High Court in paragraph 8 of their letter, to the effect that "the law should be so amended as to render it competent to Magistrates to take cognizance of cases of petty theft and the like in which the accused are habitual offenders, and to enter up a conviction in such a case and refer it to the Sessions Court for sentence, the Sessions Court being at liberty to make or direct such further enquiry as it thinks fit," appears to me to be a most excellent one, and I would strongly recommend its adoption. I consider this would further the ends of justice, and at the same time save a great deal of valuable time and labour on the part of the Sessions Judge. District and Sessions Judges in Bengal at least have, as a rule, a great deal more work to do than they can well overtake.

With reference to paragraph 5 of the Government of India's letter No. $\frac{1}{420}$, dated 31st May 1890, I beg to say that I do not think that judicial authorities will ever be induced, except in very exceptional cases, to pass such an apparently severe sentence as transportation for life for a trivial offence against property, even though the accused may be an habitual offender. Though it is generally known to Judges that a sentence of transportation for life does not really mean transportation or even punishment at all for life, still such a sentence so out of proportion to the offence committed would probably be condemned by public opinion, and would certainly be set aside by the High Court. I remember a case which occurred when I was Joint Magistrate of Dacca (see Queen *versus* Jehan Chunder De, 21 W. R., Cr. 40) in which I committed an habitual offender to the Court of Sessions for stealing a ragged blanket (the value of which the police estimated at 4 annas) from the Mitford Hospital. The Sessions Judge sentenced the accused to transportation for life. The High Court remarked that this sentence was wholly out of proportion to the offence. They at once set the conviction aside, and ordered the Judge to partially re-try the case. At the second trial the accused was sentenced to, I think, ten years' rigorous imprisonment, and this sentence was not interfered with.

Much good would, in my opinion, even now be effected without any change in the law if the Magistrates, Police, and the Jail authorities would take the trouble to look up the old convictions of accused persons, and would put legal evidence of these previous convictions before the Court. The light sentences of which the Commissioners who recently visited the penal settlement of Port Blair give instances are, I believe, in many cases due to the fact that the antecedents of the accused were not known to the Courts which sentenced them, and legal evidence of their previous convictions was not forthcoming at the trials. At least I can say from my own experience that I very frequently am obliged to reduce sentences because legal evidence of previous convictions is not forthcoming, and therefore long sentences would appear harsh and would never be allowed to stand.

From H. G. COOKE, Esq., Magistrate of Hooghly, to the Chief Secretary to the Government of Bengal,—No. 41, dated 6th January 1891.

With reference to your No. 4146J. of 19th December 1890, I have the honour to report that I venture to think that there can be no two opinions as to the necessity for more stringent regulations for the control of habitual offenders in Bengal. The evils that are mentioned in the letters of the Indian and Punjab Governments are entirely borne out by my experience of several districts.

2. Before considering the Bill, I may be permitted to state that on two points a declaration of the wishes of the Executive Government are required; these are the granting of postponements to enable the antecedents of persons who may be habitual offenders to be traced, and the more cordial co-operation ef the police and magisterial officers of adjoining provinces in police work.

3. With regard to the first point, some discretion is allowed by law to Deputy Magistrates, whereas I am inclined to think that in a certain well-defined class of cases it would be justifiable to allow none; the subordinate courts very often fall into the error of inflicting an inadequate sentence on a man who may be an habitual thief for no better reason than that the offence for which he is under trial is a petty larceny. Postponements to enable the previous history of the man to be traced are refused on the ground that the offence itself is trivial, when investigation would disclose several previous convictions. I would advocate that in the case of strangers to a district, whose antecedents are not known, no discretion should be allowed to the courts, and in such cases postponements should be granted till the true antecedents are ascertained; such persons invariably give incorrect particulars as to their home and previous life; but were they to understand that they would remain in custody till they stated the truth on these points, I believe that the habit might be checked.

4. Such postponements, however, are of little avail without the cordial co-operation of the police of other provinces, who should be given to understand that their loyal co-operation in such matters is as essential a part of their duties as any investigation of local interest. I have met with cases of inordinate delay and palpable apathy on the part of the police of other provinces, which discourage our police in pursuing with their aid what may be inquiries of great importance for the suppression of crime; this apathy should be impossible, and there should be some clearly defined and simple process by which such failure to co-operate might be visited with the censure it merits. I venture to say that far more cordial co-operation is obtained from the police of the French settlement of Chandernagore than is sometimes received from the police of provinces under British rule, but subject to a different Local Government.

5. The two points to some extent are allied: granted the postponements to ascertain the antecedents of a criminal, it is essential that such postponements should be turned to the best account, and to do this the earnest co-operation of the various provinces is indispensable.

6. Next, to turn to the draft Bill. I note what appears to me a curious omission, namely, that, while providing for police surveillance for seven years in the case of habitual offenders (Section 3) and providing also (Section 4) for such surveillance in lieu of security under Section 123, Criminal Procedure Code, and providing for the commutation of surveillance for security with the permission of the Magistrate (Section 7), nothing whatever has been said of demanding security for good behaviour as an incident of a second conviction; in offences of violence it is in the power of a court, in addition to such sentence as it may award, to require security to keep the peace; and by analogy in offences against property it should be within the power of the court to demand security for good behaviour in addition to imposing a sentence, just as it is proposed to impose surveillance under such circumstances.

7. The Procedure under Section 123 is complex and is hampered with certain well recognized difficulties, which have been increased by the order insisting on local inquiries. Surely when a second offence is established, the evidence which would justify the demand of security is stronger at the close of the trial than the vague evidence on which security is required under Section 123.

I would advocate that Section 3 include the power of ordering security for good behaviour as an alternative to police surveillance in the case of habitual offenders.

8. With reference to the efficiency of surveillance, much depends on the rules which it is proposed to frame under Section 7 of the Bill.

What is primarily sought for is to restrict the movements of habitual offenders and to ascertain them. It occurs to me that a useful means to this end would be to require security for the appearance of the habitual offenders. I have little faith in the efficient working of Sections 9 and 10; what useful or willing co-operation in police work has ever been obtained from headmen, village watchmen, and the like? The whole scheme rests on the faithful co-operation of a class which almost always fails to co-operate. To avoid this some greater hold is required, which should take the form of *hazai zamin* as distinguished from *faal zamin*. The village headman or watchman should be punishable for the disappearance of a registered offender under Section 176, Penal Code, in which, if offender includes registered offender, which might be stated in the Act, the punishment is actually more severe than that provided by the Bill (Section 11). It would be desirable to make this class clearly understand their personal responsibility, and an order to that effect should, I think, form part of the proceeding, which order should be served on the parties concerned. The zemindars of Bengal do very little in return for the immense revenues that they enjoy under the Permanent Settlement, and from the note of Rajah Piyari Mohun Mukerjee on police reform, I gather they would like to shirk such small obligations as are at present imposed on them by the law. I would make every landholder nominate an agent in every village, who should be held responsible in such cases.

9. Sections 9 and 10, in so far as they provide for intimation of the arrival of a registered habitual offender being reported to the police, must be inoperative. In Hooghly and Howrah, especially about the mills, there are whole colonies of up-country men living generally in towns where there is no village headman and the watch is performed by the police: how can the arrival of a registered offender be detected? So with regard to the gangs of labourers who pass from west to east and back again for work on roads and tanks: how is a registered offender to be identified? I see no way out of the difficulty, except branding this class on the face in such a manner as to defy concealment, the art of tattooing is so well understood and practised in India that it is used as a decoration by the women of the country, and this proposal is not therefore open to the objection of inhumanity that might be made on a superficial view of the case.

10. Sections 12 to 15 of the Bill might, so far as Bengal is concerned, be extended with advantage to a totally different class of offences, *viz.*, burglaries and cattle theft. I believe that villagers know perfectly well who are the burglars and cattle-lifters that prey on them, but from cowardice, indolence, or dread of the inconveniences entailed in a police investigation and trial, fail to disclose what they know. The sections enumerated in Section 12 are not offences at all common in Bengal, and I doubt much whether their authors are nearly so well known as those of the offences I have named. If this form of stimulant is required to make the public co-operate with the police, then certainly the latter kinds of offence should be included in the interests of Bengal.

11. There are cases in which the village community consists almost entirely of burglars; they do not rob, however, in their own villages, but in adjoining ones. It might be practicable to place the obligation to pay compensation on such villages rather than on the villages that suffer.

12. The proposal, however, does not commend itself to me; though its use in exceptional cases might be attended with good results, I fear that it would lead to cruel injustice if applied otherwise than with such extraordinary caution and moderation as would render it nearly inoperative.

13. The proposal alluded to in paragraph 6 of the letter of the Government of India, and contained in a note by the Judges of the Madras High Court, appears eminently practical and reasonable.

14. I see nothing to be added to the admirable statement of the Hon'ble Judges, beyond pointing out that both the Bombay and Madras High Courts have decided that a case referred to a District Magistrate or Sub-divisional Officer for enhanced punishment may be committed by such officer to the Court of Sessions. It is true that a committal for trial is not the same thing as a reference for enhanced punishment to the Sessions Judge, yet the interpretation of the law seems a step in the right direction. I cannot see that any valid objection exists to the Madras proposal taken in its entirety.

From C. A. WILKINS, Esq., District and Sessions Judge of Bhagulpore, to the Chief Secretary to the Government of Bengal,—No. 31, dated the 7th January 1891.

I have the honour to acknowledge the receipt (on the 28th ultimo) of Mr. Under-Secretary Luson's letter noted on the margin, in which I am asked to give a very early expression of my opinion (1) upon the subject of the more stringent regulations which it is proposed to draft for the control of habitual offenders in India, and (2) upon the draft Bill prepared by the Government of the Punjab in that connection.

Police No. 4146J., dated 19th December 1890, and enclosures.

I. As to the first matter, I can pretend to no special knowledge or experience; my work for nearly eleven years past has been almost entirely of a judicial nature; the subject is a very large one; it forms the most important part of the administration of criminal justice in so far as the latter is concerned with the repression of crime. The time given to me for considering the matter is very short, and for these reasons I fear that my opinion will be of little weight, and that I shall fail to throw any new light upon the question. I will, however, deal with it as best I can.

I am entirely of the opinion that the law as it stands at present is insufficient to enable the authorities to properly deal with "habitual criminals," and I think that the majority of Magistrates fail to exercise even the limited powers that they possess in the right way.

As pointed out by the Government of India, there are three weapons in the hands of the authorities with which the latter can contend against crime. The first of these is to be found in the provisions of Section 75, Indian Penal Code. There has, I think, been a vast improvement of late years in the manner in which previous convictions are traced out and brought home to offenders, but there still remains much to be done. The first things requisite are the

maintenance of an uniform system of registers containing full particulars of the criminal history of each person convicted under Chapter XII or Chapter XVII, Indian Penal Code and a reciprocity of action between the Police of different districts and different provinces. I believe that Colonel Ramsay, late District Superintendent of Police of the Monghyr District, devoted his special attention to this branch of his duties, and I think that he might supply some very useful hints as to the form of register and the police action to be taken in such cases. When a prisoner is released from jail, his real home should be ascertained; nothing is more common than for habitual offenders to give a false name and a false residence, and if his real name and residence were ascertained and recorded in each case, instances would frequently occur in which a criminal, believed to be in jail for his first offence, would be discovered to be an old offender with several previous convictions against him. In this way the habitual criminals or old offenders would gradually become as well known to the police in India as they are to the detective police in England. Again, it is the rule, in the case of any accused charged under Chapter XII of the Indian Penal Code, for the police to search their registers and certify whether or no he has any previous convictions against him. This is excellent in theory: it is not always carried out in practice, and even when carried out, is not pushed to its full extent. Inquiries should be made, if necessary, in other districts or even in other presidencies, and any police officer who fails in this most important duty should meet with severe departmental punishment, if not be prosecuted for neglect of duty.

The next step is to secure copies of any previous conviction, together with evidence as to the identity of the accused. Here also a great improvement has taken place in late years; but not infrequently the evidence is insufficient.

I now come to the action of the Magistrate who tries the case with all these materials before him. I regret to say that very many Deputy Magistrates seem never to have read or never to have grasped the meaning of Section 511, Criminal Procedure Code. Very often they do not go to the trouble of proving the previous convictions in the manner required by law, and the necessary result is a reduction of the sentence on appeal. I have had cases before me committed to the Sessions in which accused have been sent up under Section 75, Indian Penal Code, with absolutely no evidence to justify action under that section. Matters have certainly improved in this respect in this Sessions division.

Again, there is an unreported ruling of the Calcutta High Court* to the effect that, when an accused person has not been previously convicted for several years, his previous convictions should not be taken into consideration against him. Read in its proper light this ruling is, I venture to say, perfectly sound and just; for it is only fair that a man who has, so far as is known, lived a clean life for several years should be considered to have thereby wiped out and expiated his former offence. I have had to apply this ruling several times; but certain Deputy Magistrates entirely misapply it; they decline to take into consideration any previous conviction of old date, notwithstanding later convictions of recent dates.

* Kangali Singh, appellant, Criminal Appeal No. 519 of 1890.

I now come to Sessions trials, wherein old offenders are committed for trial under one of the sections of Chapters XII and XVII, Indian Penal Code, read with Section 75 *ibid.* The Commissioners who visited Port Blair seem to think that Sessions Judges do not sufficiently inflict sentences of transportation for life in cases of habitual offenders. If the Judges are too lenient in this respect, I think that they have strong reasons for acting as they do. In the first place, prisoners dread far more a long term of rigorous imprisonment than one of transportation; the labour is heavier and the restrictions more close: hence a sentence of imprisonment is frequently passed as being practically more severe than one of transportation. Secondly, a sentence of transportation for life is not one to be lightly passed on a petty thief, even though he may have passed the greater part of his life in jail. Thirdly, such a sentence would rarely be upheld by the High Court on appeal. Lastly, the sentencing officers are never sure whether a sentence of transportation will really be carried into effect. I believe that in all the large jails in this Presidency there are to be found prisoners under sentences of transportation for life. I myself sentenced a Burmese convict in this jail to be transported for life for attempting to murder a warder; and yet some months afterwards I heard that he had been seen in the Presidency Jail and a knife discovered upon him. There may be reasons, unknown to me, why the sentence of the Court is in a particular instance not carried into effect; but I venture to say that, if such reasons exist, the Sessions Judge who tried the case should be asked, and have authority, to revise the sentence; and that it should not be left to the executive authorities to determine whether the sentence is a correct one or not. Judges cannot be expected to inflict a sentence which they believe has no certainty of being carried into effect.

Again, it is suggested that the prosecuting authorities do not pointedly bring before the sentencing Court the antecedents of the accused. If by the "prosecuting authorities" are

meant the Police and the Magistrates, I have already dealt with this matter. But if the Public Prosecutor is meant, then I would point out that he can do no more than establish the previous convictions charged against the accused; any other form of bringing the antecedents of the accused to the notice of the Court would be improper and futile, nor would it be within his province to suggest that any particular form of punishment should be inflicted.

It is to the above reasons that I consider the failure of the provisions of Section 75, Indian Penal Code, to be due. Improvement is wanted in the work both of the Police and of the Deputy Magistrates who try by far the larger number of criminal cases.

I venture to state that I entirely concur with the proposal made in paragraphs 7 and 8 of the letter of the Madras High Court,* which forms one of the enclosures to the letter under reply. I venture also, with great deference, to differ entirely from that tribunal in the proposal set forth in paragraph 9 of the same letter. Why should a man have two trials simply because he is an habitual criminal? The Magistrate is competent by law to try him, if not to adequately sentence him. If convicted by the Magistrate, nothing can be more reasonable or more in accordance with our procedure† than that a superior authority should inflict a heavy sentence. The sentence would be that of the Sessions Judge, who would also be responsible for the conviction. If there were any errors in the trial, he would see that they were rectified, or that the accused was not prejudiced. As the law now stands, witnesses may have to travel hundreds of miles in order to give a second time evidence which they have already fully given before the Magistrate. This entails great inconvenience and some expense to them, and great expense to Government, and it is for this reason that a failure of justice or an illegal composition of an offence frequently occurs, as pointed out by the Madras High Court.

* No. 2092, dated 27th July 1885.

† Section 349, Criminal Procedure Code.

But it seems to me that, while paragraphs 7 and 8 of this letter contain a proposition which effectually bridges over a hiatus in our criminal procedure, paragraph 9 knocks away the supports of the bridge and renders the proposition futile. In the first place, I venture to urge that the tendency of legislation is not now to extend the system of trial by jury, certainly in these provinces. The system, so far as I can learn, is understood to be a failure, and to be unsuited to the character of the people. It is a system which, even in England, is not looked upon with favour by experienced Criminal Judges and Jurists, or even by any well informed man. Its best advocates are the "*laudatores temporis acti*" and the criminals themselves. But even assuming the system to be a good one, I fail to see why it should be extended to cases of, for instance, petty theft, merely because the accused may be thought to deserve a heavier punishment than a Magistrate can inflict. And if the proposal of the Madras High Court be carried into effect, *viz.*, to offer the accused the option of a trial by jury, then the extension of Section 349, Criminal Procedure Code, to such cases would be absolutely inoperative. An old offender is tried by a Magistrate and convicted; he is asked whether he will elect to be sentenced by the Sessions Judge, or whether he wishes to be tried again by a jury or before assessors. What is his inevitable answer? Certainly that he will be tried again. In the one case he has his conviction staring him in the face, and his punishment is almost certain; in the other he has the chance of escaping conviction by another trial by a set of men whose verdicts are admittedly uncertain, and on the evidence of witnesses, many of whom will have probably, through lapse of time between the two trials, forgotten so much of the details of the case as to break down when re-heard. There is always, also, the chance of his friends getting at the witnesses in the meanwhile.

For these reasons I would strongly advocate the adoption of the proposals contained in paragraphs 7 and 8 of the Madras High Court letter. I myself made a proposal of the same kind some years ago.

The second of the weapons in the hands of the authorities is to be found in the provisions of Chapter VIII, Criminal Procedure Code, Sections 110 *et seq.* This is a powerful weapon if used with judgment, vigour and discretion. Unfortunately it is frequently wielded without a display of any of these qualities. The sections are not equally worked in different districts or even by successive officers in the same district. There is a rule made by the Bengal Government to the effect that all such cases should be enquired into on the spot, *i.e.*, at or near the village where the suspected person lives. Nothing could be fairer than this, if the magisterial authorities had time to carry it out promptly; but work has so increased of late years that such cases are frequently kept pending for an undue length of time, and the result is that considerable hardship is caused to the suspected person. Again, the subordinate magistracy are frequently content with a very superficial enquiry, and practically send such a person to jail in default of security on evidence which is insufficient or unreliable. Hence, a good

many of such cases have met with severe comment at the hands of the High Court, and Magistrates have been in consequence deterred from making full use of their powers.

The third weapon is the system of surveillance which is at present in force. I am unable to give details, but these will be well known to Government. I believe the present system to be this: that any person with two convictions against him under Chapter XII or Chapter XVII, Indian Penal Code, is entered in a register known as the "badmashi register," and is subject to domiciliary visits by the police and chowkidars, especially on dark nights favourable to house-breakers and thieves; and also has to report himself periodically at the nearest police-station. A first conviction will render the convict liable to similar restrictions if the convicting Magistrate certify to that effect. I would not withdraw any portion of this system. Many an offence has been detected, and offender discovered and convicted, when his unauthorized absence from home has led to enquiries being made. The difficulty as to first convictions, I am told, is that the subordinate Magistrates are not to be trusted to exercise their discretion; and the peril of all such surveillance lies in the fact that it opens the door to tyranny and oppression by the police. I have no sentimental feeling in favour of an habitual offender, and I think that the police, from a sort of custom which has grown up, are more harshly thought of than they deserve. But the danger is certainly a great one; and its remedy is to be found, not in withdrawing a supervision so as to give increased facilities to criminals, but in improving the status of the police themselves. I see no reason why a secret register of "suspects" should not be maintained; in fact, it is difficult to understand how crime can be efficiently dealt with or repressed unless the police keep such a register. But it should be a secret register, and not one on which any overt action should be taken except in guiding defective officers when investigating an offence. It would cease to be a secret register were it to authorize domiciliary visits on a "suspect," merely as such.

I would certainly extend the powers of the Criminal Courts in the direction of giving them authority to order a convict to be kept under surveillance. The system would be one not altogether dissimilar in its object and results to that in force as regards juvenile offenders who are confined in a reformatory for a term of years. The object is to prevent their having an opportunity of committing crime, and of so forcing them to seek for an honest livelihood. I would also authorize the Criminal Courts to demand security for good behaviour as a consequence of and following a second conviction for a "felony." What better evidence can there be of a man's bad character than a second conviction for such an offence following upon a formal trial? I am convinced that one result would be that shorter sentences might be inflicted, and that the jails would not be so full as they are.

As regards paragraph 4 of Mr. Lyall's letter No. $\frac{1}{420}$, dated 31st May 1890, I have nothing to say except in favour of the suggestion therein made. Arson is not a common offence in these districts. Cattle-poisoning seems to be less prevalent than it used to be; but cattle-lifting and illicit trade in stolen cattle are very rife. There might well be instances in which the prevention of special forms of crime would be best dealt with in the manner suggested; and I see no reason why Local Governments should not have authority to deal with them in such a manner and with the restrictions set forth. At one time the offence of kidnapping by coolie recruiters threatened to become a pest in this district, but a few successful prosecutions and heavy sentences seem to have stamped it out, especially since the villagers have shown a tendency to take direct action against the kidnappers. Why should not the keepers of cooly depôts, the authorized persons who hold licenses, be made to deposit heavy security, which should be liable to be forfeited, in whole or in part, or any of their local agents being convicted of kidnapping? They now employ the most unscrupulous persons for the purposes of recruiting, and pay them so much a head for every person brought in; let them be forced by some such means to employ only persons who will conduct their operations with propriety.

II. As to the draft Bill prepared by the Punjab Government, my opinion is, I venture to say, that it takes a step in the right direction. The object of all criminal legislation is, or should be, not so much to punish as to repress crime; and I can conceive no better way of doing this than by keeping a firm hold over all convicted criminals, subject of course to rules which will obviate all possible chance of undue oppression and tyranny.

I trust that His Honour the Lieutenant-Governor may not think that I have written on these subjects at undue length. Probably, were they better known to me and known in a more practical fashion, I should have found it unnecessary to write so much.

From R. H. ANDERSON, Esq., Offg. District and Sessions Judge of Chittagong, to the Chief Secretary to the Government of Bengal,—No. 25S., dated the 16th January 1891.

In reply to your No. 4146J. of the 19th December 1890, I have the honour to offer the following few remarks.

1. My personal opinion is that there could be no really effective surveillance of habitual offenders of bad characters in Bengal with the existing police establishment. Such persons may easily be prevented leaving their homes for any time, but my impression is that by far the greater part of the crime which the system of surveillance is intended to check is nocturnal and is attributable to bad characters who live near or at no very great distance from the places where the offences are committed. For the success of any system of surveillance we should, I think, have to depend almost entirely on the village chowkidars, whose interests and fears are too well known to admit of our placing much reliance on them. The regular police could exercise very little supervision over the chowkidars, and it would be hopeless to attempt to prove neglect of duty on their part.

I know of no reason why the provisions of Sections 505 and 506 of the late Criminal Procedure Code should not be re-enacted, but I do not see any advantage in empowering Magistrates to demand security from offenders after they have undergone any term of imprisonment they may be sentenced to. It would, I think, be much better to impose longer sentences at once.

2. The suggestion made by the High Court of Madras appears worthy of adoption. As far as my experience goes, the proposed change in the law would not relieve the Courts of Session in Bengal to any great extent, because the accused in the cases alluded to are almost always undefended and the trials are short. I believe no injustice would be done to accused persons. Conviction is a certainty in nearly every case; 39 out of every 100 jurors and assessors know as well as the Judge himself that a thief would not be on his trial before the Court of Sessions unless he had been punished before. There is a strong tendency amongst natives to convict in these cases. I may add here that I consider it is a mere farce to pretend to conceal previous convictions from juries and assessors.

With reference to the last paragraph of the Madras High Court's letter, I have no doubt that such a proviso would entirely nullify the proposed amendment of the law. What accused who had been once convicted would not claim a trial before the Sessions Court, trusting that something would happen in his favour?

3. I have had no experience of combinations for committing mischief to property. It seems to me the proposal of the Punjab Government is an excellent one for places where such conspiracies are found, and there ought not to be much difficulty in discovering them. I have no doubt that the whole of even a native community would not long bear taxation for the benefit of a few evil members, before it took effectual steps to bring them to justice.

From D. B. ALLEN, Esq., Magistrate of Pooree, to the Under-Secretary to the Government of Bengal, Judicial, Political and Appointment Departments,—No. 5 T. M., dated the 16th January 1891.

With reference to your Police No. 4146 J. of 19th December 1890, issued 3rd January 1891, I have the honour to submit the following report..

2. I agree generally with the suggestion made by the Government of India that it would be advisable to improve our control over crime by subjecting habitual offenders to some system of surveillance, and the introduction of a procedure for levying compensation from the inhabitants of a locality may also be desirable; but so far as my limited experience goes, I can remember no instance in which there was proved to exist a conspiracy for cattle-poisoning or arson. Whenever either of these crimes become unusually common, certain classes who are interested in procuring hides or in repairing thatching are generally suspected; but the other members of the community in which these classes live are much interested in bringing offenders to justice, and I do not think that persons would shrink from giving evidence for fear their own cattle should be poisoned, or their own roof-tree burned down. The tendency is rather the other way, and in former times, when security for good behaviour was granted more readily than is now usual under the present law, an unfortunate Chamar, who was merely suspected in a case of cattle-poisoning, was too often imprisoned as a bad character after the police had failed to procure sufficient evidence against him for the substantive offence. There may be parts of India where the law requires amendment in the direction proposed, but of such conditions I have no experience.

3. I agree with the Government of India's proposal in the latter part of paragraph 5, that the record of convictions under confinement should be examined and explanations called for, but any real improvement in this direction will, I fear, never take place until District Judges be vested with powers to call for records of cases tried by first class Magistrates, and to enhance sentences when they are clearly inadequate. This proposal is merely an extension of that made in paragraph 6, with which I concur; but there should be no limitation, such as is entered in the last portion of paragraph 9 of the letter No. 2092 of 27th July 1885, from the

High Court at Madras. If the accused person be given an option, he will of course prefer trial by the Sessions. In fact, one of the main reasons that some Magistrates won't commit habitual offenders is the fear that the accused would be acquitted. It is often said "I preferred giving the man 2½ years; had I committed him, he would probably have been acquitted, instead of getting the transportation that he deserves."

4. As regards the draft Bill, I agree generally with the principles laid down in Sections 3 to 9. As for Sections 10 and 11, the maximum penalty is, I consider, too severe, especially as regards owners of land failing to give information to the police. Even chowkidars, unless proved to be in collusion with the habitual offenders under surveillance, should not, I think, be rendered liable to rigorous imprisonment merely for failure to report breaches of rules. I am not, as at present advised, in favour of Section 12, but that, as before stated, may be due to want of sufficient experience.

From J. A. Bourdillon, Esq., Magistrate of Sarun, to the Under-Secretary to the Government of Bengal, Judicial, Political and Appointment Departments,—dated Chuprah, the 19th January 1891.

I have the honour to submit, for the consideration of the Lieutenant-Governor, the following remarks upon the proposed Act for the surveillance of habitual offenders as desired in your letter No. 4146 J., dated the 19th ultimo.

2. I regret the delay which has occurred in making this report, but it has been occasioned by the receipt of your letter after my departure on leave, and by the difficulty which I experienced in finding time while on leave to place the following observations on paper. The delay, however, is, in my opinion, more than compensated for by the fact that I am now able to quote in support of my views a letter received by last mail from Mr. J. Munro, C.B., whose unrivalled experience of police work, both in Bengal and London, demand for his opinions the most careful consideration. I add extracts from his letter as an appendix.

3. The proposals of the Punjab Government are set forth in the first paragraph of Mr. Tupper's letter, and are these—

(1) the surveillance of habitual offenders;
(2) the improvement of the law of security; and
(3) the better repression of the offence of mischief by the assessment of compensation on localities where it occurs;

and the Government of India, besides making general remarks, specially refer in paragraph 6 of their letter to a proposal of the Madras Government which may be considered as a fourth point for report, *viz.*—

(4) the amendment of Section 349 of the Code of Criminal Procedure.

As the first, second, and fourth points are closely connected, I will at once dispose of the third before touching upon them.

4. I need only say that I entirely concur in the proposal to make the whole body of villagers, jointly and pecuniarily, responsible for crimes of the kind described when committed by some of their number. In this district serious mischief is not common, and the only offences which approach it are damage done by grazing cattle and the poisoning of cattle for gain. In respect of offences of the first kind, though the annoyance is very great, especially in the case of indigo lands, and the aggregate of damage often considerable owing to the very great number of instances, yet the damage is seldom as much as R50 in a single case. For this reason I would recommend that the proposed legislation should also cover cases of ordinary mischief under Section 426, Indian Penal Code. Cases of the second kind are now very rare in this district.

5. The remarks of the Government of India as to the danger of leaving so powerful a weapon as a village fine in subordinate hands are very judicious, and I would suggest that the power of ordering the imposition of a fine of this kind be reserved to Commissioners upon the report of the district officer.

6. The proposed legislation, if carried into effect on its present lines, would probably be a dead-letter in this district at present, but it is impossible to say when it might not be necessary to have recourse to it; for with such valuable property as the buildings of an indigo factory lying practically open to the operations of malevolence, it is pretty certain that, should any general movement against the indigo system take place, or any serious ill-will be aroused against an individual planter, it would be accompanied with fire-raising of a serious type.

7. The remaining matters for report are so intimately connected that it is difficult to disentangle them. The first proposal is to compass the better surveillance of habitual offenders, and this it is proposed to achieve by enabling a Magistrate to direct that on conviction a habi-

tual offender may be sentenced to a term of police surveillance, in addition to his substantive punishment. For this proposal I have nothing but entire approval; but I consider that a great deal will have to be done through the rules referred to in Section 7 of the Punjab draft Bill before complete effect can be given to the order of surveillance.

8. The principle of making an executive order part of the magisterial sentence has already been admitted in the cognate case of security to keep the peace (*vide* Section 106, Code of Criminal Procedure), and the forward step of giving similar power to order security to be of good behaviour is natural and unexceptionable. But the great advantage of Sections 2 and 3 of the draft Bill from a District Magistrate's point of view is the lessening of the discretion left to Native Magistrates; or, in other words, the restriction of their opportunities of going wrong. At present it is in the power of Magistrates in Bengal to direct that a convicted person shall remain under police surveillance, but my experience is that this power is used in very few cases indeed, and is really a dead-letter. Now that every Magistrate is confronted with a plain definition of "habitual offender," and is empowered to place him under police supervision, I feel certain that the power will be largely used if, as should certainly be the case, the permissive provisions of the law are supplemented by the general instructions of Government and the particular injunctions of the district officer.

9. Sections 7 to 11 of the Punjab Bill treat of further details in the scheme of surveillance, and it only need be said that the provisions they contain are altogether unexceptionable.

10. Sections 4 to 6, both inclusive, deal with the improvement of the existing law of security, and are, on the whole, I think, to be accepted. Section 4 in particular is a humane amendment which many Magistrates will be glad to see in the Statute Book as affording them a middle course between the consignment of a suspect to prison and his unqualified discharge; and if the rules under Section 7 are strongly drafted and vigorously carried out, a sentence of police surveillance will be by no means an inadequate punishment for a suspect, the evidence against whom hardly warrants his committal to jail.

11. As regards the working of Section 6 (in which there is an obvious misprint of 122 for 112), I have some misgivings, for I do not consider it necessary to go through all the forms of a preliminary enquiry into the livelihood of a suspect in the case of a man who is already a habitual offender and under police surveillance. I should be inclined to recommend that when a man under police surveillance desires to be relieved of it on giving adequate security, the Magistrate of the district or sub-division should be empowered to decide the matter "after such enquiry, if any, as he may think fit to make."

12. Having thus very briefly given my opinion on the provisions of the Punjab Bill, I venture to make a few observations on two or three matters closely connected with the general question of the supervision of bad characters and habitual offenders.

13. The first point to which I would draw attention is that, unless the police supervision is stringent and thorough, the Act will be of small effect, and it is therefore essential that the rules should be strongly drawn and rigorously carried out. On the subject of these rules I have much to say, both theoretical and practical, since in this district there is already in existence a system of passes rendered necessary by the large numbers of Sarun men who annually emigrate eastwards, and an attempt has been made to supervise the registered bad characters. But as any detailed observations of this nature bear rather on the rules under Section 7, I will not now offer any, but will ask that, if thought proper, I may be granted an opportunity of commenting on any rules that may be drafted under that section.

14. Another point which I also wish to bring forward is that efficient supervision is impossible unless we have better arrangements for *identifying* our habitual offenders. At present it may be said that, in comparison with the methods of the European police, we have no machinery for identification worth the name. On this subject I hope to lay before Government in a short time proposals for the better identification of criminals based on the French system, and will therefore say no more in this place.

15. Lastly, I have to refer to the remarks of the Government of India on the sentences of previously convicted offenders which will be found in the 5th and 6th paragraphs of Mr. Lyall's letter. The argument of those paragraphs is that, in spite of Section 75 of the Indian Penal Code, sentences on persons who have already been convicted are often ridiculously inadequate: it is urged that the long sentences involving transportation are most effective agents to reform on the one hand and to deter on the other, and lastly a suggestion of the Madras Government is offered for criticism.

16. I venture to think with submission that the Imperial Government in condemning the inadequate sentences in Bengal has hardly allowed sufficient weight to three considerations. In the first place, my experience shows that many old offenders receive light sentences because it is

impossible to identify them, and because, even if they are identified and admit a previous conviction, there is often extreme difficulty in proving these convictions; so that a Magistrate frequently has to base his sentence on the admissions of the accused, which, as will be readily understood, are usually short of the truth.

17. Secondly, it is to be remembered that the provisions of Section 75 of the Indian Penal Code are permissive only, and not peremptory, and two very opposite views of them are held, which may be called those of the Jailor and the Magistrate. According to the former, which apparently has the support of the Government of India, the mere fact of a previous conviction imperatively demands not only a severe but an increased sentence on a second conviction without much regard to the nature of the latest offence. But, on the other hand, the view held by the majority of the native magistracy leans more towards mercy, and it is not uncommon to find that, if the latest offence is of a trifling character, or has been committed after a considerable interval, a light sentence is awarded. Moreover, it is not uncommon to find severe sentences awarded under Section 75 reversed by Sessions Judges on appeal. There is something to be said for both sides, but the first theory savours too much of Procrustean reform, and the fallacy of the second lies in the underlying belief that if an old offender has not been detected for some years he has necessarily been innocently employed.

18. Lastly, there remains the fact that, in spite of the provisions of Section 348 of the Code of Criminal Procedure, some Sessions Judges discourage the commitment of such cases to the Sessions on the not unreasonable ground that though technically the offender is a habitual, yet his offence is one which might be adequately punished by a magisterial sentence, without taking up the time of a highly-paid official and of his jury or assessors. Accordingly, in some districts, unless the evidence of habit is insurmountable, the offender is disposed of with the maximum magisterial punishment.

19. Under the proposed definition of a habitual offender, this discretion will no longer be allowed to Magistrates, and unless some expedient be devised the Sessions Courts will be flooded with committals under Section 348, Criminal Procedure Code. The admirable suggestion of the Madras Government exactly meets this case, and I trust that it may be adopted, for in practice the amendment will be most beneficial in reducing work, while in theory it is on all fours with the existing law in regard to the powers of District Magistrates to pass severer sentences than those which Magistrates of the second and third classes are competent to award.

Extracts from a private letter from J. MUNRO, Esq., C.B., formerly Inspector General of Police, Bengal, and Superintendent of Criminal Investigations in London.

Our supervision of convicts (in India) must be ineffectual, because we do not recognise that a convict whose history renders supervision necessary as to his action after release has any duties in the way of facilitating such supervision being exercised. Supervision is not now a judicial punishment as it should be made, and supervisees are not made, as they should be, to report themselves to the village and thana police. The burden of their supervision is cast exclusively on the police, and no responsibility is thrown on the supervisee. I urged this years ago, referring to the English statute with reference to the supervision of habitual criminals, and little dreaming that in London I should have to administer that very department myself. All my experience acquired in London confirms my opinion previously expressed, that convicted budmashes, on conviction as thieves, burglars, etc., should be sentenced to imprisonment followed by so many years' police supervision; that while under such supervision they should be compelled to report their movements, means of livelihood, etc., to the police (and this in India should be village as well as thana police); and that any failure to report should be punishable as an offence. If you get this done, you will find an enormous change in the efficiency of your supervision of convicted men.

And be it remembered that with efficient and deterrent supervision of convicted men the number of suspects who have not been convicted will decrease. If you had your pucca budmashes who have broken the law and been convicted well in hand, your possible budmashes will be easily dealt with.

From C. C. STEVENS, Esq., Commissioner of the Patna Division, to the Under-Secretary to the Government of Bengal, Judicial Department,—No. 26Ct., dated the 30th January 1891.

In reply to your letter No. 4146J., dated 19th ultimo, on the subject of the more stringent regulations which it is proposed to draft for the control of habitual offenders and on other kindred topics, I have the honour to offer the following remarks.

2. I have myself, on some former occasion, already recommended legislation on the model of 34 and 35 Victoria, Chapter 112, and am still of opinion that such legislation is required.

It is questionable, however, whether a register of mere suspects, as distinguished from actual criminals, could very well be authorized by legislation, and it is doubtful whether the same amount and kind of surveillance is required for the two classes. It appears to me that in the case of convicts the surveillance should be more open and regular, while that in the case of suspects should be secret, discretionary, and irregular. I think that the registration of the latter class must of necessity be left to executive order. In the case of criminals it seems to me that some use might be made of village punchayets.

3. I would not advise the restriction of the legislation against criminals to those who have been convicted twice or more, and it is perhaps doubtful whether it is desirable even to limit it to Chapters XII and XVII of the Penal Code. As for the former of these points, it is perhaps enough to say that often a man is convicted for the first time, but the nature and circumstances of his offence show that he is really a professional who should be subjected to surveillance just as much as his companions who may have been more fortunate in eluding justice. There is no advantage in having an inelastic law; but a power such as that of ordinary surveillance should only be entrusted to experienced persons. I think that all orders of the kind should be passed by (1) District Magistrates, (2) officers holding first class powers, (3) Subdivisional Officers. The officers of these two latter classes might be specially empowered, and if they desire to impose surveillance for more than three years, should report to the District Magistrate for sanction. The District Magistrate might have power to order surveillance up to seven years. I am inclined not to give the power to Sessions Judges or to the High Court, but to allow the Magistrate to pass an order in a case in which either the High Court or the Sessions Judge has convicted. A conviction for bad livelihood perhaps should not be a conviction in which surveillance should be imposed in addition to imprisonment. At the same time I think that the substitution of it for imprisonment, suggested by Section 4 of the Punjab draft, would be advisable, and I see no objection to Section 6, provided that the term for which security may be taken may be equal to that for which surveillance is ordered.

4. Perhaps the punishment laid down in Section 8 might be liable to increase in the case of a second offence.

5. I agree with the principle of Sections 10 and 11 of the Bill.

6. I see no objection to Section 12, but it would, so far as my experience has indicated, be of little use in Bengal.

7. I concur in thinking that sentences of transportation for life should be more frequent than they are for habitual offenders; but the difficulty here is rather with the High Court and the Sessions Judges than with the Magistrates; in my judgment it would be impracticable to lay down by law that a person who had been convicted a certain number of times must be transported for life. Re-convictions are at present carefully watched by both the Inspector General of Police and the Commissioners, and from Magistrates who appear to have dealt inadequately with cases explanations are required. This supervision undoubtedly does good, but we have no means of extending it to the higher judicial officers.

8. I approve of the suggestion of the Madras High Court, that in the cases of persons now committed to the Sessions merely because of previous convictions, a finding should be recorded by the Magistrate, and reference be made to the Sessions Judge for punishment. This would save the time of all concerned. I do not, however, approve of the proposal to give the prisoner the option of committal to the Sessions. Jury districts are few in Bengal, and in any case it does not seem necessary to provide for the vested rights of habitual criminals.

From T. D. BEIGHTON, Esq., District and Sessions Judge of Dacca, to the Chief Secretary to the Government of Bengal,—No. 135, dated the 4th February 1891.

I have the honour to acknowledge your No. 4146 J., dated the 19th December 1890, on the subject of passing certain regulations with a view to the better control of habitual criminals in India.

The first point which presents itself for criticism is the judicial aspect of the question. There can be no doubt, as is abundantly proved by the extracts from the letters of Mr. Lyall and Dr. Lethbridge, that judicial authorities, especially native Deputy Magistrates, frequently neglect to pass a sentence of adequate severity on habitual criminals. I would suggest, in the first place, that a circular order emanating from Government and addressed to Magistrates generally, pointing out the desirability, in order to repress habitual crime, of passing more severe sentences on hardened offenders, would have some effect. I would especially point out the advisability of drawing the attention of judicial authorities to the provisions of the Whipping Act, a punishment which, in my experience, is in this country, as undoubtedly in England, the most complete deterrent for certain classes of crime at present known. The

offence of garrotting has, as is well known, disappeared altogether from England, simply owing to such offenders being now liable to a punishment which they dread. I note in the extracts from the letters above specified how seldom this punishment is resorted to, although most of the offences therein specified are so punishable. The Act itself, however, appears to me to require some alteration. Under Section 7 of the Whipping Act, no person sentenced to transportation or imprisonment for more than five years can be punished with whipping. I think this provision of the Whipping Act should be amended. In England there is, to the best of my recollection, no such restriction, and the duration of imprisonment imposed, which debars the additional sentence of whipping, is at any rate not so low as five years. I am also disposed to think that in certain classes of crime which tend to become chronic in individuals, especially theft from the person and theft from a house, whipping should on a second or third offence (of course retaining the other exceptions and precautions enjoined in the Act) be compulsory. Whipping is the cheapest form of punishment to the State, and though it undoubtedly attaches a moral stigma to the recipient, it has not the corrupting effect of a long course of jail life.

2. With regard to transportation, I have, it must be owned, hitherto regarded the punishment as not nearly so severe in the eyes of criminals as rigorous imprisonment. Notwithstanding the arguments urged for the wider utilization of this form of punishment in the papers now circulated, I still think that for the lower classes of the people of this country, certainly for Mahomedans, transportation even for life is not so strong a deterrent as incarceration in an Indian jail. It is not to be supposed that released convicts do not inform their co-villagers of the relaxations commented upon with approval in the letters of Mr. Lyall and Dr. Lethbridge; and whatever benefit to the morals of the individuals concerned is effected by the mode in which they are dealt with after ten years of their term is over, I cannot see how the substantial advantages there set forth can have anything like the same deterrent effect on criminals as the anticipation of a long imprisonment in jail where no such privileges can be obtained. It is said that the great majority of the convicts under the conditions described "lead quiet, industrious and creditable lives," but there is nothing suggested beyond a mere surmise as to their conduct after their return to India, where they are free from the surveillance to which they are undoubtedly liable even during the second stage of their life in the Andamans, and, what is still more important, free from the restrictions as to crime necessarily imposed in the Andamans by the impossibility of escape if detected.

3. At the same time I think that in the case of offenders of the higher castes (always, however, a small minority of convicts) a sentence of transportation will have greater terrors than one of imprisonment. This will be especially the case with regard to Hindus of the four superior classes, whose caste feelings will be powerfully affected by a sentence of transportation. Such persons are not, however, as a rule, habitual offenders.

4. I am altogether opposed to the suggestions of the Madras High Court as to the extension of Section 349, Criminal Procedure Code, in the manner proposed. Any advantages gained, and I admit they are advantages, by shortening the period of trial and doing away with the hardship of a double attendance of witnesses, are more than compensated by the serious drawback that the Court of Sessions will have in ordinary cases to adjudicate on evidence recorded by another tribunal .The subordinate judiciary consists principally of Deputy Magistrates whose record of evidence are often slipshod, unsatisfactory, and couched in ambiguous and even unintelligible language. The other alternative is to send for the witnesses and try the case *de novo*. I imagine the latter is the course which will ordinarily be followed, as Sessions Judges would be loath to pass the heavy sentences which the necessities of the reference demand without hearing the evidence. The provisions as to " hearing the offender" (by which I suppose is meant his pleader) will be in most cases practically nugatory, as habitual offenders are generally undefended.

5. The last branch of the subject relates to the proposed Act drafted by the Punjab Government. I have carefully gone through this Act, and though it obviously requires redrafting in some respects [*e.g.*, the definition of habitual offender in section 1, sub-section (2), is altogether too wide], I should think the principle is unobjectionable. Whether such stringent provisions are necessary in Bengal I am not prepared to say. The success of such a measure if introduced in Bengal, will depend no doubt very largely on the results of the enquiries of the Police Commission now in progress. Unless some considerable improvements are effected in the police organization, I think the powers to be placed in their hands under the draft Bill are too large, and the opportunities for tyranny and oppression too great. At the same time, there is great force in the observations of the letter of the Government of India under notice, with regard to recent improvement in communications and the consequent facilities with which bad characters can now evade arrest; and, as justly pointed out by the Punjab Government,

offenders, even on security, can resume indulgence in their criminal propensities at some place distant from their homes. The habitual criminal can find a home and an income wherever he is free from surveillance and the repressive effects of the security bond, and is not fettered by the difficulty of taking with him a wife or family.

I think, therefore, on the whole, that some system of surveillance should be established in Bengal on the lines of the Punjab Bill. Section 5 of the Bill at any rate seems quite unobjectionable, assuming that the definition of "habitual offender" be restricted. I am doubtful whether the provisions of Section 4 are necessary or desirable in Bengal.

From A. FORBES, Esq., Magistrate of Shahabad, to the Under-Secretary to the Government of Bengal, Judicial Department,—No. 4, dated the 5th February 1891.

I regret that, owing to pressure of work connected with the approaching census, your No. 4146J., dated 19th December last, forwarding for report a Bill for the more effectual surveillance of habitual offenders and for other matters, has remained so long unanswered. In reply to that letter I now have the honour to offer the following remarks.

2. The points on which the Government of India require a report are—

(1) The provisions of the Bill regarding the control of habitual offenders.

(2) The provisions which deal with the prevention of special acts of mischief such as cattle-poisoning and arson.

(3) The question of empowering Magistrates to refer convictions in certain cases against habitual offenders to the Sessions Court for adequate sentence.

3. As regards point (1) I think that the Bill provides Magistrates with an effective and at the same time humane weapon in defence of public security, of the very kind required in this Province, especially in regard to cases of persons required to give security for good behaviour under Section 123 of the Criminal Procedure Code. In the present state of the law the hearing of such cases is quite the most unpleasant of all a Magistrate's duties. He has no option between passing, on mere hearsay evidence as to repute, a sentence of imprisonment as if against a proved criminal; or by accepting the proferred security he feels that he is allowing a dangerous character practically to go free. I entirely agree with everything advanced in Mr. Tupper's letter of the 30th September 1889 on this point. The great majority of persons who are placed before a Magistrate under the section referred to belong to the poorer classes, and have no friends of sufficient means or respectability to warrant their being accepted as sureties, and the Magistrate is often obliged to send the suspect to jail almost against his inclination. If a substantial person does come forward as surety, it is almost certain that he does not do so from humanitarian motives. The Magistrate can give no valid reason for not accepting the offered bail, though he feels no doubt, as the men leave the court together, that he is restoring an employé to an employer worse than himself. In short, I think that this portion of our criminal law is most unsatisfactory, and that some remedy is much needed.

4. As regards the Bill itself I beg to say as follows :—

Section 4.—I should prefer that the Magistrate should be allowed the option of requiring a person to give security or placing him under surveillance, instead of only being able to do so in the event of his failing to give security. What I have said in the preceding paragraph bears upon this, and I have no doubt that a downright bad character has often less difficulty in finding bail than a really innocent man against whom, however, appearances happen to go.

I have no fault to find with the Sections 5 to 11, except in the matter of drafting. It is not clear whether in Section 7 *et seq.* the words "habitual offender" are intended to include a person placed under surveillance under Section 4 or not. District Magistrates and the Calcutta High Court would probably hold different views on this point. In the sub-clauses of Section 7 there seems to be some confusion as to "limits" and "place of residence." Sub-clause 2 seems to point to an intention to allow registered persons to choose their place of residence within some certain area, such as a police thana or outpost jurisdiction, within which (sub-clause 3) they would be allowed to move about with comparative freedom; but sub-clause 6 reads as though they would not be allowed to go outside of their own houses without permission. But the word "leave" at the end of that clause may perhaps be a misprint for "detection" or some such word.

5. As regards the second point noticed in the India Government letter, I do not think that there is any need, so far as Lower Bengal is concerned, for the preventive measures suggested.

6. I think the suggestion of the Madras High Court would have been a good one if they had made their Registrar omit paragraph 9 of his No. 2092 of 27th July 1885. That paragraph appears to me to stultify the whole proposal, for every person in the position supposed will of course accept the chance of getting off before a jury on a second trial. I do not see that the proposed amendments (without the High Court's proviso) would operate more harsh-

ly than the law does at present, for one or more of the two or several convictions which now go to increase the sentence may have been had before even a second or a third class Magistrate, and only the remaining one before the Sessions Court. If the Magistrate's decision can be accepted in the first case, why should it not be accepted in the second, and if it cannot fairly be accepted in the second, is it fair that it should be accepted in the first?

From B. L. GUPTA, Esq., District and Sessions Judge of Cuttack, to the Under-Secretary to the Government of Bengal, Judicial Department,—No. S—13, dated the 6th February 1891.

I have the honour to acknowledge your letter No. 4146J., dated 19th December 1890, with enclosures, calling for an expression of my opinion on the matters referred to therein.

2. In regard to the subject of enacting more stringent regulations for the control of habitual offenders, it appears to me that if the surveillance of bad characters and old offenders is to exist, it ought to be legalized, and that some judicial supervision over the action of the police is urgently needed. The system of police surveillance which exists at the present day is extremely inadequate and inefficient, and I am inclined to think that the duty of surveillance is rarely taken up in a sprit of earnestness and as an important part of a police officer's duties. No intelligent and well-planned method is followed, and no watchful vigilance over the movements of old offenders is exercised. Rather it is looked upon as a formal matter of very minor importance, and is casually taken up in a perfunctory way. There are reasons to believe that whenever a police officer wishes to fill up a gap in his diary, or wishes to be away from the thana for business or pleasure which concerns him personally, he shows the time as occupied in investigating the livelihood of bad characters. There is also reason to believe that the open register now publicly kept at every thana often serves as an engine of oppression and annoyance. No discretion is exercised in entering names in the register, and a man convicted of technical theft and fined is ever afterwards registered as a *badmash*. The discretion, I think, should be vested in the Court which convicts, and in the District Magistrate; and the supervision ought to be exercised in an intelligent and effective method embodied in rules framed by the Government. That being so, Sections 4, 5, and 7 of the draft Bill have my general approval as far as the principle involved therein is concerned.

3. The matter embodied in section 12 may be appropriate for the Punjab, but its extension to the Lower Provinces would be inexpedient. My experience of the Bengal districts induces me to say with some degree of confidence that the offences therein mentioned are not committed wholesale and on an extensive scale in Bengal. Arson, though common in some of the districts, is chiefly attributable to the malice of individuals, and is, I suspect, occasionally resorted to, to give employment to thatchers and builders of thatched dwellings. But I am not aware of cases where it was perpetrated with the approval or connivance of a village or a whole tract of country.

4. The observations of the Government of India on the working of Section 75 of the Indian Penal Code find my absolute concurrence. In respect of that matter, the revisional jurisdiction of the High Court is amply wide, and the Hon'ble Court will doubtless be in a position to enforce compliance with the views of Government. In this matter Courts of Session need the support of the High Court as a court of appeal and revision. I myself think that a sentence of transportation for life is a very appropriate sentence for an old and incorrigible thief, who needs an absolute change of scene and surroundings to mend his habits. The Andamans afford him the only chance of becoming an honest and useful member of society—such society as exists there.

As regards the suggestion contained in the last paragraph (6) of the India Government's letter, I should feel considerable diffidence in vesting subordinate courts with the power of entering a conviction against old offenders and sending up the record to the Court of Session for an adequate sentence. No doubt in such cases the Sessions Court would have also the power to annul the conviction on direct further enquiry, but its difficulty would be great. Old offenders are very apt to be "run in" by the police, and the enquiry held by Magistrates into these cases is not unusually of a superficial and perfunctory nature. A case against an old thief often requires very careful scrutiny, and for my part I should prefer to have the witnesses before me than the dry record of their evidence, before passing what often needs be a heavy and perhaps a lifelong sentence.

From T. T. ALLEN, Esq., Superintendent and Remembrancer of Legal Affairs, to the Chief Secretary to the Government of Bengal,—No. 1248, dated Calcutta, the 6th February 1891.

In reply to your No. 4146J. of the 19th December last, I have the honour to say that it is so many years since I have held any office in the mofussil, that any opinion I express on the

proposed Bill for the control of habitual offenders is purely theoretical, based merely on the imperfect recollections of twelve or fifteen years ago.

2. I anticipate very little practical effect from the proposed surveillance by the police, until the police force is far more numerous, far more honest, and far more efficient than it was, or is, in this province of Bengal.

3. Except in the matter of dacoity, I doubt if there are any in Bengal who properly fulfil the character of habitual offenders. There of course are idle, dissolute fellows, who steal whenever they get a chance in preference to working, mostly to be found in large towns; but the regular dacoits are the only professional and habitual offenders I know of as indigenous to the province. If the police were efficient and enough of them, the surveillance might check somewhat the operations of these dacoits.

4. The power formerly given of taking security from habitual offenders and persons of general bad livelihood was but little used, and, as far as I remember, had little effect upon crime. Petty local depredators would fall under the section, but the really capable and dangerous criminals seldom were touched, their operations being carried on at a distance from their houses.

5. As to compensation for malicious injuries to be levied on the neighbouring villages, I have no recollection of any occurrences where the application of the proposed sections could fairly be made. Destruction of crops by cattle would be the most likely form in which such malicious injury would be caused. Cattle-poisoning would generally be the work of individual Chamars who wanted to sell the hides to contractors for the European market.

6. Compensation, which is to be levied by a tax that falls on the class exposed to injury, rather than on the class committing the injury, is a compulsory application of the mutual insurance principle.

7. I have no particular objection to either of the principles of the proposed Bill; I simply regard it as very unlikely to have any serious effect in Bengal.

Memorandum by E. R. Henry, Esq., Officiating Inspector General of Police, Bengal,—dated 7th February 1891.

As directed in Government letter Police 4146J. of the 19th December 1890, I submit a note upon the subject of the more stringent regulations which it is proposed to draft for the control of habitual offenders in India, and upon the draft Bill prepared by the Government of the Punjab in that connection.

I will note only upon those sections of the draft Bill which deal with the surveillance of habitual offenders and with the improvement of the law of security, as I have not served in districts where the offences of cattle-poisoning and arson are habitually committed and remain undetected, and I consequently have no special experience to guide me in offering an opinion upon the provisions of Section 12 of the Bill.

Apart from the provisions of the Penal Code, the only provisions which exist for the prevention of crime by habitual offenders are those contained in the Criminal Tribes Act and in Chapter VIII of the Criminal Procedure Code.

The Government of India are of opinion that the Criminal Tribes Act affords in the provinces in which it is in force an effectual method of dealing with members of such tribes. This statement requires, however, explanation.

This Act is applicable, not to individuals, but to a tribe, gang, or class of persons, and before its provisions can be extended it is incumbent upon the Local Government to submit a report to the Governor General in Council which shall contain information upon the following amongst other points :—

"The arrangements which are proposed to be made for enabling the tribe or gang to earn its living."

This constitutes the real difficulty, and it has proved in practice so insurmountable that even when a strong case has been made out, the Local Government has declined to take action on the ground that the expense connected with the scheme is prohibitive. I may instance the case of the Maghaya Domes. There is a mass of correspondence extending from 1866, or possibly earlier, up to 1878. In the latter year the Lieutenant-Governor, upon a full consideration of the facts and with a full knowledge of the depredations committed and the mode of life followed by the Maghaya Domes in several districts of the Patna Division, finally decided that the proposal to have them brought under the provisions of the Act was impracticable. The North-Western Provinces' Government had come to the same conclusion. Mr. Munro, the Inspector General of Police, to whom a reference was made and who had special experience of the working of the Act in connection with the Bedyas, considered the proposal objectionable on the score of expense.

In fact, the correspondence on the subject makes it clear that the Act can be made applicable only in the most exceptional cases; that its extension entails heavy expenditure; and that, as a means of preventing the commission of offences, it is of very partial application, and for every-day purposes of little and real use.

What is required is an Act which can be made applicable to individuals; under which rules adapted to the particular conditions of each province or local area can be framed, and legal sanctions provided for infraction of these rules.

All these essentials are contained in the draft Bill submitted by the Punjab Government, and so far as its general scope is concerned it is all that is required. Certain modifications and amplifications are, however, it seems to me, needed to make the Act suitable to the Lower Provinces. These I may briefly notice.

The provisions of the Bill apply to all persons who have been twice convicted under Chapter XII or XVII of the Indian Penal Code.

Offences under Chapter XII, *i. e.*, relating to coin and Government stamps, are relatively of unfrequent occurrence, and as the punishments provided are severe, there seems no reason for objecting to those persons being brought under surveillance for whom a heavy sentence passed under Chapter XII of the Penal Code has had no deterrent effect. Chapter XVII of the Penal Code relates to offences against property.

Now, while it is reasonable to place under surveillance a person who has been twice convicted of robbery or dacoity or of receiving stolen property, as the habitual commission of these offences may be said to indicate great depravity and a determination to prey upon society, it is difficult to find any argument in support of the proposal to place under the same surveillance a person who has been twice convicted of mischief or of criminal trespass, or who has been convicted once of mischief and once of criminal trespass; yet this proposal is embodied in the draft Bill. I instance these two particular offences as extreme cases, for they are both of the nature of civil wrongs, and not unfrequently criminal courts take up and adjudicate these cases in which they have no proper jurisdiction, instead of referring parties to the civil courts. At cultivation time there is always a crop of cases in connection with cutting bunds and *ails* which come under the head of mischief. There are also cases of cattle trespass which are dealt with as mischief. Similarly as regards criminal trespass. It is hardly necessary to dwell more upon this, for it would obviously be most injudicious to bring defendants in these classes of cases under the provisions of a surveillance Bill.

Many petty theft cases are prosecuted in which the defendants, though technically guilty, do not belong to the class of real habituals. Some graduation is required. It cannot be argued that a man who has twice been convicted of stealing a head of Indian-corn out of the field when pressed by hunger is a person whom it is necessary to place under surveillance. It seems hardly necessary to bring cases of fraudulent dispositions of property within the purview of the Bill. Without discussing this point at greater length, sufficient has been said to show that the wording of the Bill requires amendment, and that it is desirable to specify the particular offences the commission of which on two or more occasions shall render the term "habitual offender" applicable for the purpose of the Act.

The wording of Section 3 of the draft Bill gives all classes of Magistrates jurisdiction. Under the Bill a Magistrate who can inflict a maximum sentence of one month's imprisonment is empowered to place a defendant under seven years' surveillance, and there is no provision enabling the District Magistrate to revise or cancel such order. No argument is needed to show that this section must be recast.

The District Magistrate and certain other Magistrates specially empowered in that behalf by the Local Government should alone be competent to pass surveillance order. Magistrates not so empowered should, after recording a conviction, forward their records to the District Magistrate with a statement of the grounds upon which they deem a surveillance order required, and the District Magistrate should then deal with each case on its merits.

It seems doubtful whether an order for surveillance should be passed upon a second conviction if the substantive sentence then passed is non-appealable. These are details which could be best dealt with under rules issued by the Local Government. Under Section 7 of the draft Bill provision should be made for conferring on the Local Government more extensive powers to make rules regulating the procedure of the courts applying the provisions of the Act.

A section should be added giving a right of appeal to the District Magistrate from other Magistrates, whether sub-divisional or Magistrates specially empowered to pass orders. This is required to enable cases of hardship to be quickly and cheaply redressed.

In Sections 10 and 11, for the words "village headman" the words "Member of a chowkidari punchayet" might be substituted, and after "owner or occupier of land" the words "or his agent" might be added.

Section 4 contains a useful provision. It not unfrequently happens that the bad character succeeds in obtaining security principally because it is known that unless the security is given he will be committed to jail. Pressure by the defendant's relatives is brought to bear, and security is offered which the Magistrate generally accepts, although he knows that the person who offers it has neither the intention nor the means of preventing the defendant from reverting to bad courses. Under the provisions of Section 4 a term of surveillance can be substituted for the alternative of imprisonment in default of furnishing security, and once the order for surveillance is passed, either directly or as a substitute for security, the Magistrate has, under the terms of Section 6, full discretion to refuse to accept security in lieu of the liability to surveillance. This will give the Magistrate a much-needed power over the more troublesome bad characters. There are no other points in the Bill calling for special remark.

From D. R. LYALL, Esq., Commissioner of the Chittagong Division, to the Chief Secretary to the Government of Bengal,—No. 178 G.M., dated the 11th February 1891.

I have the honour to acknowledge the receipt of your No. 4146J., dated 19th December, and to express my regret at the delay which has occurred in replying to it.

I received it while in the Lushai hills, and since my return I have had so much to do in connection with frontier matters that I have been unable to take up the question.

2. I am most decidedly of opinion that stronger legal powers are necessary to enable the police to efficiently supervise habitual criminals. A certain amount of supervision is exercised now, but it has no legal sanction, and it is doubtful even whether a man over whom such supervision is exercised would not be able to recover damages in a civil suit.

The law as it now exists is very feeble, and convictions under the bad livelihood sections are hard to get. The law is also so worded that the evidence required would almost suffice for conviction under a clause of the Penal Code. I am also decidedly of opinion that legislation on this subject should extend to all India.

The Bill submitted by the Punjab Government appears to me to be a distinct move for the better, but it should be accompanied by a re-enactment of clauses 505 and 506 of the Criminal Procedure Code of 1872. The wording of the Bill will have to be altered in places to adapt it for all India, but its principle is good, and I see nothing to alter in its provisions.

The provisions of Section 12 are much required in this division. At present respectable men pay blackmail to the bad characters as an insurance against arson, and they prefer to do this rather than complain and risk incurring the enmity of the bad characters.

3. There will be a considerable outcry against a law like this, as there is no doubt that public opinion in this country is very much in favour of dealing over-leniently with habitual offenders, but this outcry should, in my opinion, be disregarded.

From E. N. BAKER, Esq., Deputy Commissioner of Manbhoom, to the Chief Secretary to the Government of Bengal, Judicial Department,—No. 132T., dated the 17th February 1891.

I have the honour to acknowledge the receipt of Mr. Luson's letter No. 4146 J., dated the 19th December last, forwarding for report certain papers regarding the surveillance of habitual offenders, including the draft of a Bill prepared by the Punjab Government on this subject.

2. The Punjab Government in forwarding the draft Bill observe that the Criminal Procedure Code contains no provisions regarding surveillance over released convicts, similar to those of the English Statute 34 and 35 Vic., chapter 112, possibly for the reason that the Legislature may have considered that the provisions regarding demanding security from bad characters contained an efficient substitute. It is then pointed out that the latter provisions are inadequate for various reasons, and it is urged that they require to be supplemented by an enactment legalizing surveillance of habitual offenders in certain cases.

3. That the present law regarding the taking of security to be of good behaviour is ineffectual cannot be denied. There is a reason for this, which is not mentioned in the papers forwarded with your letter, but which seems to go to the root of the matter. It is this. Money security for keeping the peace is fairly efficacious, because offences which involve a breach of the peace are almost necessarily committed in public, and the offender is known. There is therefore a reasonable probability that a breach of the conditions of the bond will be followed by its forfeiture. But such offences as burglary, theft, and the like, to prevent which is the principal object of bonds to be of good behaviour, are commonly committed in secret,

and the offender is not known to the victim or to any one else who is interested in denouncing this. Sometimes he may be suspected, but as the bond is only liable to forfeiture upon judicial proof of a breach, this is of no avail. It is only in the few cases in which the breach is detected and prosecuted to conviction as a substantive offence, that the additional penalty of the money bond can be enforced. These cases are so few that they do not add appreciably to the deterrent effect of the substantive punishment. For this reason, I venture to think that, in present circumstances, money security can never be an efficient substitute for surveillance as a preventive measure. Those provisions of the draft Bill which allow security to be substituted for surveillance in certain cases are, in my judgment, unsound in principle.

4. The Government of India, in paragraph 2 of their forwarding letter, observe that when a person is called upon to show cause why he should not give security for good behaviour, a formal enquiry is made before the Magistrate, and people are sometimes afraid to come forward and give evidence. This is a matter of general experience, and the failure of "bad-livelihood" cases, for which the local police report that there is ample evidence, is a common occurrence. I regret I am unable to suggest any practical remedy. A person who has to furnish security for good behaviour has commonly to pay the persons who stand as sureties for him; and for this reason, and also because it involves imprisonment in default, the order therefore constitutes something of a punishment. It is out of the question that anything in the shape of a judicial punishment should be imposed except after a judicial enquiry and upon legal evidence. I would, however, strongly support the proposal of the Punjab Government that when a person is convicted of an offence under Chapters XII or XVII of the Indian Penal Code, the court should have power, at the time of passing sentence, to require him to furnish security for good behaviour, in addition to the substantive sentence. This proposal is based on the analogy of Section 106, Criminal Procedure Code, which is a most useful measure, not always sufficiently made use of. I see no reason why the order should not be passed on the first conviction, and I believe this is in accordance with the English practice.

5. The rules actually in force in Bengal regarding police surveillance over bad characters may be briefly summarized as follows :—

Two registers are maintained at every police-station, known as registers XIII and XV. Register XIII contains the names of all persons living in the station circle, who have been convicted of cognizable offences punishable under the Indian Penal Code, the Excise Laws, the Salt and Arms Acts, or of uncognizable offences punishable under Chapter XII or XVII of the Indian Penal Code with rigorous imprisonment for three years or upwards, or who have been required to furnish security under Section 109 or 110 of the Criminal Procedure Code. An entry once made in register XIII can only be cancelled on the death, conviction, or removal of the convict, or on the conviction being set aside on appeal. Persons entered in register XIII who have been convicted under Chapters XII or XVII, Indian Penal Code, are enquired after by the police at least once a year.

6. In register XV are entered the following classes of persons :—

(1) All persons whom the convicting Magistrate directs to be placed under police surveillance.
(2) Bad characters who have not been convicted, but whose names are ordered to be entered by the District Magistrate or the District Superintendent of Police.

Names may at any time be removed from this register by order of the District Magistrate or District Superintendent of Police. Under orders issued in 1889, the persons entered in this register are divided into three classes, *viz.* :—

(*a*) persons to be enquired after from time to time, *i.e.*, either once a quarter or once in six months;
(*b*) persons to be watched, *i.e.*, to be looked after once a month;
(*c*) persons to be watched closely, *i.e.*, to be looked after at frequent intervals.

Besides the above, there are rules by which in certain cases the convict, on release from imprisonment, is escorted home by the police, who thereafter keep him in view.

7. Persons entered in these registers are looked after in this way :—(1) The chowkidar of the village where a suspect lives is required to report his movements at the police-station, and also by visiting his house at night to ascertain whether he is at home or absent. (2) The station officer or a subordinate visits the village at the prescribed intervals, and ascertains by enquiry from the villagers how he is getting his living, and whether there is anything suspicious in his proceedings. His house is also usually searched at once in the event of any theft or burglary occurring in the neighbourhood.

8. The principal defects in this system of surveillance are (1) that they are not authorized by law, and (2) that they merely enable the police to *watch* the movements of bad characters, and not to *control* them. Moreover, the chowkidars by whom the daily, as opposed to the periodical, watch is supposed to be maintained, are an inferior and untrustworthy agency, and are commonly believed in some cases to connive at or participate in the crime which they are paid to prevent. I venture to think that, in any legislation intended to make surveillance more efficacious, the more dangerous classes should be distinguished from the less, and that, as regards the former, power should be taken to prescribe their place of residence, to restrict their movements, and to entrust the immediate supervision of them to a higher class of officer.

9. I would suggest that for the purposes of legislation bad characters be divided into two classes, which might be designated respectively (1) suspects and (2) habitual offenders.

10. In the class of suspects should be included—

(*a*) every person who has been convicted of any offence punishable with imprisonment of three years or upwards;

(*b*) every person who has been required to furnish security under Section 109 or 110, Criminal Procedure Code;

(*c*) every person, not included in the above, who, in the opinion of the District Magistrate, is reasonably suspected of committing or conniving at serious crime.

It is absolutely essential to any effective system of surveillance that the third class should be included, *i.e.*, persons who are suspected, though they may not have been convicted. These include some of the most cunning and dangerous criminals, whose names and characters are sufficiently well known, although they have succeeded in escaping detection. It is a radical defect of the Punjab Bill that it makes no provision for this class. If thought necessary, it might be provided that an appeal should lie to the Commissioner against any entry in this class. If this were done, it should be expressly provided that the entry and appeal are not judicial proceedings, and that the Sessions Judge and High Court should have no jurisdiction. These proceedings relate to prevention and not to punishment, and should be dealt with by police and not by judicial authorities.

11. Persons registered as suspects should be allowed to live where they please, and should be subject merely to surveillance of the kind now exercised in Bengal. The Local Government should have power to make rules as to domiciliary visits, inspection of houses, removal of means of concealing property, and the like.

12. Habitual offender should include—

(*a*) Every suspect who may be subsequently convicted of an offence punishable with three years' imprisonment or upwards, and

(*b*) Every person who may be more than once convicted of such an offence.

A habitual offender should not be allowed to live where he pleases. He should be required to live at a specified place (which should be in the immediate neighbourhood of a police-station); he should only be allowed to leave the prescribed limits on receiving a pass on certain conditions; he should be required to report himself at the station at least once every day; and the station officer should look him up at night. Power should be given to make rules for these arrangements. I would further suggest that it be provided that in aggravated cases, of three or more convictions, it should be lawful to lock up the offender at night in a suitable building to be provided for the purpose. Penalties for breach of the rules should of course be provided.

In this manner habitual offenders will be prevented from leaving their homes for the purpose of committing crime: while the supervision over them at their homes will be not only far more close and constant than at present, but will be exercised by a better paid and more trustworthy agency, under the direction of the European head of the District Police.

13. Every entry, whether of suspect or habitual offender, should be perpetual and not for a term of years. It is unreasonable that the police should be required to cease watching a bad character after an arbitrary period, because he has not been convicted during the interval. Surveillance should continue until the District Magistrate thinks it may safely be dropped. On the other hand, the District Magistrate should have power to omit or to strike out any name from either register at his discretion, if he thinks the person in question has ceased to belong to the criminal classes or if the original conviction was for a very petty offence. In the case of habitual offenders, it might be well if an annual report were submitted to the Commissioner showing the circumstances of each name on the register, and the reasons for retain-

ing it. The rules should also give power to prescribe conditions as to security and so forth, on which surveillance over a habitual offender might be suspended.

14. In paragraph 6 of Mr. Lyall's letter it is suggested that in cases which become cognizable by the Court of Session merely because the offender has been previously convicted and seems to be a habitual criminal, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence. This suggestion is a good one, and will not merely save the time of the Sessions Courts, but will do away with the double attendance of the parties and witnesses, and with the delay which is so fruitful of failures of justice. I would suggest, however, that the Sessions Court in such cases should only have power to sentence up to seven years' rigorous imprisonment, and should not exercise full powers. It is apt to be dangerous for one court to pass sentence on evidence recorded by another; and if a case is so serious as to call for a sentence of transportation, or of imprisonment exceeding seven years, it is not unreasonable that the accused should have the right of a full trial by the superior court.

15. I would also suggest, as tending in the same direction, that when any person becomes liable to enhanced punishment by reason of Section 75, Indian Penal Code, the Magistrate who convicts him shall have power to pass a sentence of imprisonment not exceeding twice the amount which he is, in the exercise of his ordinary jurisdiction, competent to inflict. In other words, when a person who has once been convicted under Section 457, Indian Penal Code, is again convicted under Sections 457 and 75 by a first class Magistrate, the latter should have power to pass a sentence of four years' rigorous imprisonment. This suggestion is made on the analogy of the proviso to Section 35, Criminal Procedure Code, clause (*b*), which doubles the powers of a Magistrate who at one trial convicts a person of two or more distinct offences. I believe the course proposed would be found of wide practical application; for it frequently happens that a second conviction for theft or house-breaking does not call for a more severe sentence than four years' rigorous imprisonment.

HIGH COURT, CALCUTTA.

From H. W. C. CARNDUFF, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India, Home Department,—No. 2838, dated the 16th September 1890.

With reference to your letter No. $\frac{1}{428}$, dated the 31st May last, I am directed to submit the following observations of this Court on the subject of the more stringent regulations which it is proposed to adopt for the control of habitual offenders in India.

2. With reference to the suggestion made by the Madras High Court that in cases which come before the Court of Session merely because the offender has been previously convicted and seems to be a habitual criminal, the Magistrate should be informed to enter a conviction and to refer the case to the Sessions Court for an adequate sentence in a manner analogous to that prescribed by Section 349 of the Code, the Judges feel themselves unable to recommend that such extended powers should be conferred upon any but the highest class of Magistrates, *i.e.*, Magistrates in charge of districts. Sections 30 and 34 of the Code of Criminal Procedure provides for the investment of a District Magistrate in certain areas with power to pass exceptionally severe sentences, subject, in some cases, to confirmation by the Sessions Judge. The Judges think it would be far better to deal with the matter by extending the local application of those sections than in the way proposed by the Madras High Court.

3. * (*a*) As regards the draft Bill prepared by the Government of the Punjab, I am to say that the provisions contained in sections 1—11 thereof appear to the Judges to be on the whole useful proposals. (*b*) Section 12, however, is, in their opinion, of a dangerous character and peculiarly liable to abuse. Its enactment therefore could only be justified by necessity, and since no such necessity exists, so far as the Court is aware, in these provinces, the measure contemplated by it should not, I am to submit, be rendered applicable to Bengal.

4. The proposal of the Commissioners who recently visited the penal settlement of Port Blair, that the advantages of a sentence of transportation for life should, in the case of persons habitually guilty of offences against property, be brought to the notice of the Judicial authorities, is open to the objection that transportation for life is by law the maximum punishment for such offences, and it is contrary to the intention and spirit of the law that the maximum

* (*a*) (*b*) In a subsequent letter, No. 738, dated the 28th February 1893, the High Court have explained that they did not intend to go further than to approve of legislation with the object of permitting some proper and legitimate police supervision over such individual persons as might be shown to require it in the interests and for the security of the general community, and that they abstained, as they considered they were asked to do, from any criticism of the manner in which the object in view was to be attained.

punishment should be awarded except in the gravest cases. Moreover, Courts necessarily hesitate to pass sentences of transportation for shorter periods, because they have no means of knowing whether such a sentence will actually be carried out, or whether they will be changed by executive authority into sentences of another character. The Judges are therefore unable to agree in the view taken by the Commissioners.

NORTH-WESTERN PROVINCES AND OUDH.

From W. C. BENETT, Esq., Secretary to the Government of the N.-W. Provinces and Oudh, to the Secretary to the Government of India, Home Department,—No. 928, dated the 7th September 1891.

With reference to the correspondence ending with this office letter No. 677, dated 23rd June 1891, I am directed to submit, for the consideration of His Excellency the Governor General in Council, a copy of a Minute, dated the 29th August 1891, recorded by Sir Auckland Colvin on the proposals contained in your letter No. $\frac{1}{421}$ of the 31st May 1890, on the question of the more effective control of habitual offenders in India.

2. I am also to enclose copies of the opinions of the officers consulted by this Government, and to state, with reference to the concluding paragraph of the Minute, that copies of the Police Committee's report referred to have been submitted confidentially for the information of the Government of India.

MINUTE.

Two definite proposals are placed before this Government for its consideration, which, though they have reached me together in linked files, admit of being considered apart. They have both for their end the more effective control of the habitual criminal; but the one concerns itself with our judicial, the other with our administrative, machinery. The former has for its object the best means of securing prompt punishment to habitual offenders; the latter discusses the most effective method of dealing with them on release, after the term of their punishment has expired.

The first proposal is to adopt the suggestion made by the High Court of Madras so far back as 1885, to the effect that the law should be so amended as to render it competent to a Magistrate to take cognizance of cases which become cognizable by the Court of Sessions, merely because the offender has been previously convicted and seems to be an habitual criminal. The High Court proposes that the Magistrate should enter up a conviction and refer the case to the Sessions Court for sentence, the Sessions Court being at liberty to make or direct such further inquiry as it thinks fit, and being bound to hear the offender. The Government of India writes that this suggestion commends itself to that Government, and asks for opinion as to its adoption. The sections of the Criminal Procedure and the Penal Codes which are concerned are Section 343 and Section 75, severally.

The former provides that—

"Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Sessions or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under Section 30, placed on his trial before such Magistrate."

The latter section runs thus—

"Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years."

A perusal of the opinions submitted by the officers consulted shows that, with 11 exceptions, the opinions of those consulted are unanimous as to the necessity of a change in the existing law, so far as it affects the North-Western Provinces. In point of fact, however, the provisions of Sections 30 and 34 of the Code of Criminal Procedure confer upon District Magistrates in Oudh (and certain other territories) powers analogous to those which it is proposed by the Madras High Court should be conferred on all Magistrates. Section 30 of the Criminal Procedure Code runs as follows:—

"In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may notwithstanding anything contained in Section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death."

And Section 34 says:—

"The Court of a District Magistrate, specially empowered under Section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge."

The Court of a District Magistrate in Oudh, therefore, which has been specially empowered under Section 30, may, practically speaking, now that the transportation of prisoners sentenced to a term of years has been stopped, pass any sentence of imprisonment for a term not exceeding seven years; but any sentence of imprisonment for a term exceeding four years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

The further distinctions between the law in Oudh and the Madras proposal are, that in Oudh District Magistrates only are invested with the powers above referred to, but exercise them in all offences not punishable with death; while the proposal of the Madras High Court apparently is that all Magistrates having jurisdiction should exercise the powers which it is proposed to confer upon them, but only in the limited class of cases which become cognizable by the Court of Sessions, merely because the offender has been previously convicted and seems to be an habitual criminal; and, further, that the Court of Sessions, not the Magistrate who tries the case, should impose the actual sentence. A sentence inflicted by a District Magistrate invested in Oudh under Section 30 of the Criminal Procedure Code may extend to seven years; but must, if exceeding four years, or if it be a sentence of transportation, be confirmed by the Sessions Judge. The Madras High Court propose that Magistrates should be empowered by a change in the existing law to enter up a conviction to the term of ten years, but should refer the case to the Sessions Court for sentence, the Sessions Court being at liberty to make, or direct, such further inquiry as it thinks fit, and being bound to hear the offender.

That a change in the law in the direction indicated by the Government of India is needed may be affirmed. The proposal, which has the support of a very large majority of our officers, commends itself also to my judgment.

Many of the officers who have given their assent to the conferment of greater powers on District Magistrates for the reasons given by the Madras High Court propose simply that the provisions of Section 30 of the Criminal Procedure Code should be extended to these Provinces, and are of opinion that, were this done, no further change in the law would be necessary.

As between these alternative proposals, I should be inclined to prefer that which would extend to the North-Western Provinces the provisions of Sections 30 and 34 of the Code of Criminal Procedure, mainly for two reasons:—First, because in Oudh these sections have been found by considerable experience to work well, and the circumstances of the North-Western Provinces and Oudh, in a matter of this sort, are almost identical; secondly, because the powers conferred are confined to District Magistrates who, as a class, can alone be presumed competent to exercise such large powers; and, thirdly, for a reason which may apply perhaps exceptionally in these Provinces, but which has been referred to by several of the officers whose opinions are before us, and which has, without doubt (whatever may be said in condemnation of it), in practice, great weight. It is this. Many of our Judges under the present system are considerably junior, in some cases very considerably junior, to the District Magistrate. One consequence of this is that District Magistrates do not take their proper share in the disposal of the magisterial work of the district, objecting, in the words of Mr. Wells (page 13 of the opinions, Serial No. 14) to their decisions being reversed and criticised by officers who have been their own assistants, or who have been their contemporaries, or even their juniors at school. Mr. Finlay of Agra (page 20) refers to the same consideration; so does Colonel Pitcher (page 24); so does Mr. Adams (page 31), who writes:—

"In one division alone I found the Magistrate in one district senior to the Judge by 14 years' service, in another by 9 years, in a third by 8 years; in each case the Magistrate being a man of marked ability."

It seems to me for these three reasons preferable that the powers of Sections 30 and 34 should be conferred in the North-Western Provinces on District Magistrates, and on them only. It is true that any sentence of imprisonment for a term exceeding four years, passed by the Court so empowered, is subject by those sections to the confirmation of the Sessions Judge. But the confirmation of the Sessions Judge provided for by the law is less restrictive in its nature on the exercise of the discretion of the District Magistrate than the revisionary powers proposed by the Madras High Court. I myself should prefer to make the orders of the District Magistrate final under Section 30, Criminal Procedure Code, subject only to appeal to the High Court. I would not, as has been proposed in the course of these papers, modify Section

349, Criminal Procedure Code, further than would be necessary to bring it into harmony with the extended powers under Sections 30 and 34, Criminal Procedure Code, which I should wish to see conferred on Magistrates of districts.

If, however, the Madras High Court's proposals are put into effect, I would make them applicable to District Magistrates only: for I do not think that all Magistrates of the 1st class are capable of being entrusted with them, or should be empowered to exercise them. I am, at the same time, bound to add that, if they are drafted on the lines at present sketched by the Madras High Court, I think it probable that, as far as the North-Western Provinces are concerned, the proposed provisions would not have much effect, for District Magistrates, in the limited class of cases referred to by the Madras High Court, will hesitate, as at present they hesitate, and for similar reasons, to dispose of criminal work, and the law will, therefore, remain inoperative. I have been compelled, since I took office, to draw the attention of District Magistrates to the necessity of taking up more case work, and the periodical returns showing the amount of case work disposed of by the several Magistrates are carefully scrutinized. The repugnance of District Magistrates to dispose of criminal work, for the reasons explained, have met with no countenance from me. But I feel, at the same time, very strongly the inconvenience and the impolicy of submitting to a Judge of seven or eight years' experience the conclusions of a Magistrate of far longer service, and very possibly of far greater ability: and I have drawn attention to it in my Minute on Police Reform.

The proposal to confer on all District Magistrates in these Provinces powers under Sections 30 and 34, Criminal Procedure Code, goes, no doubt, further than the Madras proposal, which contemplates the conferment of enlarged powers on Magistrates in the case of habitual offenders only. If the larger extension of powers is objected to, any change which may be decided on in the present law might, I think, be in any case drafted in the terms of Section 30, Criminal Procedure Code, as far as the powers of Sessions Judges are concerned.

The objections taken to the proposal of the Madras High Court will be found forcibly stated in the opinions by Mr. Denniston (page 16), by Mr. Justice Syed Mahmud (page 18), Mr. Gibson (page 22), and Mr. Shakespear (page 94). The objection is based on the following grounds, that the general principle followed by legislatures is that an offender should receive his sentence from the Court which tries him; that the Magistracy is largely composed of Native Deputy Magistrates, among whom are some whose intellectual and moral qualifications and social status do not inspire complete confidence; that the proposed amendment might, therefore, impair the administration of criminal justice; and, finally, that if the accused, is to be offered the option of a committal for trial, as proposed by the Madras High Court, the provision, if enacted, will be absolutely futile. The first objection is anticipated by the Madras High Court, and is met by the provision of option to the accused of committal; but this again is taken objection to as likely, in practice, to render nugatory the proposed extension of the Magistrate's powers. There is force in Mr. Gibson's objection, that to give the power proposed by the Madras High Court to all Magistrates would be likely to lead to abuse; and I think there is also force in the objection taken by several officers, whether or no they coincide with the Madras High Court's proposals, that the alternative option of trial by the Sessions Court would in great measure nullify the advantages of the proposed change in the law. The introduction of Sections 30 and 34 of the Code of Criminal Procedure into the North-Western Provinces would meet the class of objection taken by Mr. Justice Syed Mahmud and Mr. Denniston, to the effect that the Court which tries the offences should be the Court which delivers the sentence.

I pass now to the second subject referred to by the Government of India, namely, the expediency or otherwise of adopting the provisions of a Bill drafted by the Punjab Government on the subject of the surveillance of habitual offenders. An expression of the views of this Government is requested on the provisions contained in that Bill, regarding the control of habitual criminals, as well as the prevention of special acts of mischief, such as cattle-poisoning and arson. It is unnecessary to recapitulate the provisions of the draft Bill in this paper.

With very few exceptions the officers consulted accept so much of the Punjab Bill as provides for surveillance of habitual offenders for a term of years from the date of release from transportation or imprisonment. The majority accept the substitution of a system of surveillance for imprisonment in the event of failure to give security for good behaviour. Almost all object to the provisions of Section 12, by which compensation is to be awarded and assessed on the inhabitants of villages in a tract in which offences under Sections 427, 428, 429, 435 or 436 of the Indian Penal Code are commonly committed. With regard to this latter section, which it may be convenient to dispose of first, I am not prepared to say that I altogether agree with those who object to it. I observe that it can only take effect with the sanction of

the Local Government, and if it were provided that the assessment of compensation should not be necessarily on all the inhabitants of the tract concerned, but on those classes only whom the Magistrate of the district designates, subject to confirmation by the Commissioner of the division, the law would, I think, be very useful. Arson and cattle-poisoning, the offences of which the Bill mostly takes cognizance, are not, it is true, offences much in vogue in these Provinces; and, so far as these Provinces are concerned, the provisions of the Bill regarding those offences may be pronounced unnecessary. But if the section was extended to certain classes of dakáiti, I think its provisions, if discreetly exercised, would be useful. The powers given by Section 12 are very formidable, and should be exercised, whether as to the compensation to be imposed or the persons on whom it is to be assessed, under the final authority of the Local Government. But I think there can be little doubt that the existence of a provision of this nature would have been of material assistance in the recent outbreaks of dakáiti in Lalitpur, Agra and Etawah. Where the offender, as in those cases, is one of a clan whose identity is perfectly well known to every member of the clan, and who is screened, supported or assisted by a large number of the clan, the knowledge that depredations committed by him would have to be paid for by the brotherhood would be a powerful inducement both to prevent crime and to assist in the detection of it. Whatever may be the case with arson or cattle-poisoning, dakáiti as practised upon our borders is essentially a clan offence, and I should be glad of the existence of provisions such as those contemplated in this Bill to enable the Government to deal with it more effectively. Some such powers would be of the greatest use in cases where, as in the districts named, our action is impeded by the fact that a foreign frontier runs with ours, and where, therefore, it is of the greatest consequence to restrain the members of a clan perpetrating dakáiti who live on our side of the frontier from giving countenance or assistance to those living in a Native State. The principle of recovering from families of a clan, which is known to give no help in arresting, or to conceal offenders of its own neighbourhood, the sums taken in dakáitis by members of that clan, may be new to our Indian Codes, but I should very much like to see a trial of it. It would be quite intelligible to those to whom it would be applied; and it would be in itself reasonable to make a clan which notoriously and admittedly screens or assists its criminal members realize that the whole clan (which can certainly, if it chooses, control them or assist in their capture) will have to pay for their depredations. It is, I quite concede, in the case only of crimes in which we know that a whole countryside of one caste or clan participates that such a provision of the law could be contemplated. But the crimes peculiar to India, such as thaggi or dakáiti of this kind (which is known as *bhúmiáwat*), can only be effectively dealt with, like the criminal tribes of India, by laws which are specially framed to cope with them.

With regard to the remaining provisions, the first point to be considered is the definition of an habitual offender. I should propose the restoration of the words formerly included in the definition, namely, a man of "notoriously bad livelihood, or who is a dangerous character." The section as at present printed applies to persons convicted on two or more occasions of offences under Chapter XII of the Indian Penal Code, which is the chapter relating to coin and Government stamps; or under Chapter XVII, which deals with offences against property. I much doubt whether this is sufficient, excluding, as it does, for example, the offence of kidnapping, professional poisoning, and one or two other similar offences. The definition of an habitual offender requires the greatest consideration, because it lies at the bottom and is the root of the whole scheme. A variety of suggestions have been made on this point in the correspondence before us, and the matter is competently dealt with in the letter of Mr. Porter, who was Secretary to the Police Committee recently appointed in these Provinces, and whose views will be found at page 39. The present definition of an habitual offender, so far as any definition exists, will be found in Section 110 of the Code of Criminal Procedure. It applies only to a person who is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or one who habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury. If to that definition we add the words which formerly existed, *viz.*, a person who is of notoriously bad livelihood or a desperate character, I think the definition would be sufficient: as including, for example, men who have been convicted of such offences as those above referred to by me, namely, kidnapping or professional poisoning, as well as those who have previously been punished on conviction for an offence of a similar kind, under Chapters XII or XVII; and as exhaustive, but not too general, in its terms.

The second point is the question of permitting surveillance instead of giving security for good behaviour. I see no sufficient ground for applying the proposed provisions of the law to the case of security required under Section 107, Criminal Procedure Code, *viz.*, security for keeping the peace, otherwise than on conviction (as provided in Section 106). I gather from

the draft that it is not proposed to cover this class of cases: but the point may be noticed in passing. I concur with Mr. Kaye's remarks (to be found at pages 47 and 48 of the printed papers), in so far that I would not substitute surveillance for imprisonment in those cases where a person fails to give security for good behaviour, but would limit it to habitual offenders on the expiry of their sentences as provided in Section 5. I think that imprisonment will be, in such cases, more feared than surveillance, and more effective. I agree very strongly with those officers who would limit the provisions of the Bill to the cases of persons who have actually been convicted of crime. To extend it beyond those limits would be to pass over into the power of the police all those who were unable to satisfy their demands, or to defend themselves against their hostility.

I do not know that it is necessary at present to criticise more closely the provisions of Sections 7 to 10. I agree, generally, in their terms.

With regard to surveillance, there is a great deal of truth in the remarks made by several officers as to the danger of the police abusing their authority, and as to the difficulty of men who have been convicted of crime and placed, on release, under surveillance, obtaining honest employment. Experience has, no doubt, shown that the surveillance of police over our criminal tribes has not been so effective as to encourage us to extend it in other directions. Still, on the whole, I agree with those who would extend some modified form of surveillance to the classes dealt with in this correspondence, on the conditions contemplated: and would place on village watchmen, village headmen (and, I would add, the local agents of absentee landlords), a due share of responsibility. What form that surveillance should take, and to what degree the interference of the police with men of this class should be restricted, is proper matter for subsequent consideration, should the principle of the Bill be adopted, and would be provided for, I presume, in the rules to be framed under the proposed law.

The report of the Police Committtee, Chapter VII of which contains the proposals of the Committee in regard to the habitual offender, should be sent, with our reply, to the Government of India.

A. Colvin,
Lieutenant-Governor.

The 29th August 1891.

From William Crooke, Esq., Magistrate of Mirzapur, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{522}{XVI}$, dated the 3rd July 1890.

I have the honour to acknowledge receipt of your No. $\frac{441}{VIII-185A-2}$ of 24th June 1890, on the subject of habitual offenders, and to report as follows.

2. I have no doubt that the conclusion of the Government of India in paragraph 2 of their letter No. $\frac{1}{421}$ of 31st May 1890, that the hands of the magistracy have been weakened by the change in the law in regard to the taking of security from persons of notoriously bad livelihood or of a dangerous character, is quite correct.

3. There can also be no doubt that the provisions of Section 75 of the Penal Code are not properly worked. The reason is that such cases have to be committed to the Sessions Court, where it is every year becoming more difficult to secure convictions, particularly in cases where after confinement in the lock-up accused persons habitually withdraw confessions made in the Lower Courts. The Magisterial Courts are also naturally unwilling to subject complainants and witnesses to the expense and delay of a second appearance before the Judge. The remedy for this seems to me the extension of the power conferred by Sections 30—34, Code of Criminal Procedure, to Magistrates of districts in the North-Western Provinces.

4. I certainly think that some legislation is necessary to legalize the supervision which is now maintained over time-expired convicts and habitual offenders as prescribed in page 176 of the Police Manual. Nearly all the serious offences against property in the Province are committed by persons of this class and members of vagrant tribes. The only objection to the measure is that it puts too much power in the hands of the police. This objection will, it may be hoped, be obviated by the reforms and reorganization in that Department now under consideration.

From M. S. Howell, Esq., Sessions Judge, Shahjahanpur, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{169}{VIII}$, dated the 7th July 1890.

In reply to your letter No. $\frac{441}{VIII-185A-2}$, dated 24th June 1890, I have the honour to state that in my opinion the suggested legislation is not required in these Provinces, the existing provisions of the Penal and Criminal Procedure Codes being sufficient, if perseveringly applied, to restrain habitual offenders from the commission of fresh crime.

2. The suggested legislation is objectionable as opening a new door to corruption and oppression by the police. Nor will the corruption be entirely at the expense of the habitual offender. It is well known that members of criminal tribes, by giving a percentage on their illicit gains to the police officers appointed to watch over them, provide themselves with strong evidence in support of *alibis;* and a similar arrangement will be effected between the habitual offender and his police guardians.

3. The provisions of Section 12 are objectionable as tending to encourage false charges. If a man is to be compensated for the loss of his house or crops by fire, he may just as well (he will often I think) burn them, and accuse his enemy of arson.

4. If the Act is to be passed, the definition of habitual offenders should be so amended as to exclude offenders, whose second offences were committed before their first convictions. It is a misuse of language to call a man, whose first experiment in crime is picking a couple of pockets at a fair, an habitual offender. In no other country, I believe, is a man treated as an habitual offenderunless he has been guilty of an offence after a previous conviction, and in many countries (France, Belgium, Holland, Denmark, Hungary) if a convict incurs no fresh conviction during a certain period, varying in length in different countries, from his last release from prison, he ceases to be considered an habitual offender. Such a provision seems desirable in this country; and five years would be a reasonable period.

From Colonel F. Currie, Commissioner, Sitapur Division, to Secretary to Government, North-Western Provinces and Oudh,—No. 3111, dated the 7th July 1890.

With reference to your No. $\frac{441}{\text{VIII}-185\text{A}-2}$, dated 24th ultimo, forwarding a copy of a Bill from the Punjab Government upon the subject of "surveillance of habitual offenders and the prevention of cattle-poisoning and arson" for my opinion regarding (*a*) the principle of these proposals, and (*b*) the necessity for the suggested legislation, I have the honour to submit the following remarks.

2. The measures suggested with regard to "habitual offenders" are, in my opinion, not only exceptionally severe, but wrong in principle. I say wrong in principle, for I take it that the primary purpose of the criminal law is rather to deter, than by light sentences and a mistaken philanthropy in jail administration, to make crime both easy and pleasant, and then frame elaborate rules for the surveillance of those who ought by a proper administration of the criminal laws to have been kept out of crime altogether; here, if anywhere, "prevention is better than cure." The right principle is to go in as far as possible for prevention. Exceptional measures such as those proposed should be adopted only in cases of exceptional crime and under limited conditions and tentatively; any general or wholesale adoption of such measures would, I submit, be a mistake politically. Anyhow, as regards Oudh, I think there is no necessity for the legislation suggested in Sections 1 to 11 of the draft Bill. The "Criminal Tribes Act" provides for the efficient control and supervision of criminals who come within its scope, and as regards "habitual offenders" generally, I think the end can be gained without resort to the exceptional measures of surveillance proposed by the Punjab Government.

3. For all practical purposes it would be sufficient—

(*a*) to re-enact provisions similar to Sections 505 and 506 of the Criminal Procedure Code of 1872 as regards the taking of security from dangerous characters and persons of notoriously bad livelihood;

(*b*) insist on landlords acting up to their duties and responsibilities in the matter of co-operating with the district authorities in the detection of criminals;

(*c*) insist on the regular and systematic enforcement of the provisions of Section 75, Indian Penal Code, on previously convicted offenders;

(*d*) to make jail administration and jail discipline more of a deterrent nature than it is.

4. As regards (*a*), the arguments used in 1881-82 for the omission of these wholesome provisions were far from conclusive, and are, I think, of even less weight now after a lapse of ten years than they were then.

5. As regards (*b*), so far as Oudh is concerned, under paragraphs 34 and 35, Secretary to Government, Foreign Department, No. 3502, dated 6th October 1858 (which have the force of law under the Indian Councils' Act), landholders hold their tenures "contingent on certain specified services to be rendered." Amongst these services is "their co-operation" in the detection of crime, and in the above-quoted letter the Government *ordered* that *"these duties should be rigidly exacted and enforced."* The importance of making landholders act up to their responsibilities was ably put by Sir John Strachey in his Book Circular No. XXXI, dated 3rd August 1863 (*vide* Chief Commissioner of Oudh, Digest, pages 210—216). It is, as Sir John Strachey says, "impossible to estimate too highly the importance of the influence

which for good or evil the landholders in this country have the means of exercising. Without their support and assistance it is hopeless to expect that we shall obtain a police that is really efficient." We know from experience the truth of these words in the evils that have ensued from the absence of this support and assistance from landlords. Not only have we had no support, but we have often experienced active opposition. Landlords settle Haburahs and Barwars on their estates and take as a source of income a portion of the proceeds of the thefts committed! All this must be put an end to. Any shirking of their legal responsibilities by landlords; any omission in the reporting of offences as required by law; any obstruction of the police in the discharge of their functions; any causing of disappearance of evidence should be promptly dealt with, and the duties and responsibilities of landlords on these points might be more clearly defined in the revision now being made in the Code of Criminal Procedure. I would recommend that copies in Urdu and Nagri of the rules issued by Sir John Strachey for the Central Provinces, amended according to the present state of the law, be supplied to all District Magistrates for distribution to Honorary Magistrates, Benches of Magistrates, talukdars, and leading zemindars for their information and guidance; true the older regulations have been repealed, but the obligations remain unaltered, and the Penal Code provides the means for their enforcement.

6. As regards (*c*), this question was fully discussed by the Jail Conference so far back as 1876-77. The Commissioners remarked: "Let there be a second conviction, the criminal is marked at once as one of the minority whom the ordinary terrors of the law do not deter, and as one who has given evidence of a disposition to live a life of crime.

"However light the character of the second offence may be, the re-convicted prisoner *ought* to stand in the eye of the Magistrate on a criminal level widely different from that of the offender sentenced for the first time. The inference against the re-convicted criminal rises in a geometrical ratio with every conviction. But this is not the principle on which re-convicted offenders are dealt with. Whatever may be the cause, the Magistrate's courage does not rise with the boldness of the criminal. As convictions follow one another he doles out his increased sentences with a timid hand, *and by the easy gradation of his sentences positively trains the criminal to endure a jail existence.*" These remarks are true in 1890, with the addition that life within the jail walls has been made much easier and pleasanter than it was when these remarks were first penned 15 years ago. It should be made a rule of practice that for a third offence, under any of the sections of Chapter XII or XVII, Indian Penal Code, the offender should be committed to the Court of Sessions: for the proper punishment of habitual offenders has a most important bearing on the prevention of crime. The provisions of Section 75, Indian Penal Code, have often been altogether ignored by the Native Magistracy, and apparently are not understood by all Sessions Judges (*vide* remarks of the Allahabad High Court Judges in Queen-Empress *versus* Jhanda, 29, Weekly Notes, July 18th, 1887, page 194).

7. As regards (*d*), the subject of jail discipline and management and the question of the deterrent effects or otherwise of our present system is obviously closely related to the point now under discussion, and is a question of the utmost importance, for on its decision depends the entire course of criminal legislation, the administration of criminal law, and the manner of dealing with convicts. This is clearly illustrated by our now "reaping as we have sown"—better to admit the truth than attempt to find "a scapegoat" in the police. For the prevention of crime the law has defined offences and affixed to each offence *a penalty*. A penalty means punishment, and punishment means pain, pain either moral or physical, but expressly something disagreeable; if it is not painful or disagreeable it is not punishment. A criminal is not likely to be prevented from repeating his offences, as often as he likes, unless the pain of the punishment exceeds the pleasure, or whatever it may be, for the sake of which the crime was committed, and others will not be deterred from becoming criminals, unless the consequences are such as to make them fear to hazard the penalty. Our jails, instead of being places of punishment to the hardened and more daring criminals, are more like "convict clubs" where the inmates are far better clothed, fed, housed and tended than the majority of the honest public outside the prison walls.

8. With reference to Section 12 of the draft Bill, I think in "arson cases" certainly some such provisions are called for. Offences of this nature are rife in the northern districts of Oudh, *viz.*, Bahraich, Gonda and Kheri, while detection is most difficult, and conviction, owing to our laws of evidence, next to impossible. Even where a prosecution is successful before the Sessions Judge, who sees and hears the witnesses, the accused has every chance of getting off before a Judicial Commissioner, who has only the dead record to go on and counsel to suggest a "perhaps." I have known of two cases, in one of which the accused was arrested at night, and let off on appeal by the Judicial Commissioner, on the

ground that identification in the dark was impossible; in the other, where the accused was arrested in the day time, he was let off on appeal by the Judicial Commissioner, on the ground that he did'nt believe any man would be fool enough to commit such an act in broad daylight.

9. The proposals made in Section 12 of the draft Bill are sound in principle and ought to be successful in their operation, and good results might fairly be anticipated from a measure of this kind.

From G. ADAMS, Esq., Officiating Commissioner, Benares Division, to Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{6686}{XIII-297}$, dated the 7th July 1890.

I have the honour to acknowledge your No. $\frac{441}{VIII-185A-2}$, dated 24th June, and in reply to submit the following opinion on the draft Bill.

2. I am most decidedly of opinion that the existing law is insufficient for the repression of habitual crime, and that a legal system for the effectual surveillance of bad characters is urgently required.

I think also that the legislation proposed will, with certain amendments, provide the necessary powers.

3. Section 10 of the draft Bill will make only the village headman and village watchman and owners and occupiers of land responsible.

In this division the village headman is a nonentity usually when he exists at all, while many owners and not a few occupiers of land are non-resident: so we require something more; and I can see no reason for not making the persons who are made responsible by Section 45, Criminal Procedure Code, responsible under this law also. I would go rather further and add the patwari to their number. But if so much be not considered necessary, the agents of owners or occupiers of land should most certainly be made responsible, this being absolutely necessary in a country of non-resident landlords.

Considering the views as to the administration of the criminal laws which are now generally held by the superior judicial authorities, it might be well to define "occupier of land" more distinctly.

4. Section 12 to be of much use in these Provinces should include other offences than those specified. Though destructive fires are common in some parts of these Provinces, they are mostly accidental, and I have learned to look with great suspicion on charges of arson.

Mischief to cattle for the sake of their hides is fortunately no longer a common offence.

But such system of enforced compensation would be most useful in cases of organized dakáitis and robberies and under certain circumstances in cases of rioting also. I have only private information regarding the present outbreak of dakáiti in Lalitpur, but I know the people of that part of the country well, and I believe that such a measure as is provided by Section 12 of this draft Bill would be found most satisfactory and effective in checking it. Most Magistrates of any standing must know also of cases of outlaws long sheltered from justice by the sympathies or fears of inhabitants of the neighbourhood, which sympathies or fears would give way under the compulsion of payment for the outlaws' exploits.

I would however suggest it should be provided that the Local Government might declare the provisions of the section applicable to certain classes only, or might empower the Magistrate acting under clause 2 to exempt individuals or classes according to his judgment.

From COLONEL G. E. ERSKINE, Commissioner, Kumaun Division, to Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{1894}{XIV-143}$, dated the 10th July 1890.

I have the honour to acknowledge your No. $\frac{441}{VIII-185A-2}$, dated 24th ultimo, and enclosures, asking for an expression of my opinion on the necessity for the suggested legislation for the surveillance of habitual offenders.

2. I think that the proposal to bring habitual criminals under a legalized system of surveillance is an excellent one. The necessity for such a system must be very manifest to any officer who has been engaged in the police administration of such districts as Lucknow, Bara Banki, Hardoi or Sitapur; and the principle of such a measure does not appear to me open to objection.

3. Of course the working of the system must be carefully supervised, so that it shall not be turned into an instrument of extortion or oppression, and all needless publicity should be avoided.

4. As regards the proposal that compensation shall be assessed on localities in which certain kinds of mischief are persistently committed under circumstances which indicate the

connivance of a considerable number of the residents of the locality, I cannot express so confident an opinion; the principle appears a sound and just one; but I have not personal experience of such a state of circumstances.

From J. WHITE, Esq., Magistrate of Benares, to Secretary to Government, North-Western Provinces and Oudh, —No. $\frac{2}{\text{XVII—29}}$, dated the 8th July 1890.

In reply to your No. $\frac{441}{\text{VIII—185A-2}}$ of 24th June 1890, I have the honour to state that—

1. There are insuperable objections to the public registration of "suspects," and the *badmashi* register at present maintained in these Provinces, although theoretically a secret register, is notoriously far from being in practice what it is in theory. Nothing is commoner than for Magistrates to receive petitions praying that petitioner's name be removed from the register.

2. For any new legislation to have a chance of success there is, I need not say, an obvious postulate. The position and prospects of the superior officers of the Police force must be very considerably improved; the office and appointment of thanadar must be made a desirable one; it must be so designed that the best of the native official class will prefer to take a head-constableship rather than a muharrirship in a Court or Revenue office. Else do we labour altogether in vain.

3. Given, then, this amelioration of the prospect held out to police candidates and the consequent recruitment of men better than what we get at present, I am strongly of opinion that the legalisation of surveillance of habituals as proposed by the Punjab Government is most desirable, and should prove very effective in preventing crime. And the definition of habituals as those who have been twice convicted under Chapter XII or XVII, and who have been or might have been sentenced under Section 75, Indian Penal Code, is a good and practical one. But it should be made quite clear that both convictions must have been under the same chapter.

4. It should also be quite clear that an habitual should only be ***sentenced*** to surveillance by order of a Magistrate, and that only in the two ways indicated by the Bill.

5. The proposals contained in paragraph 12 of the Bill require very careful and cautious consideration. The only tract of country where I have had personal experience of the terrorism such as described in that section was the district of Gonda, and particularly the western thanas of that district. In the years 1882-1884 arson was a matter of every-day occurrence, and but a small proportion of the cases were ever reported. Daring ruffians collected gangs of bad characters and looted the country, burning down the houses of any one who had the audacity to complain or report. Assessors in the Court of Sessions openly told the Judge in Court that their houses being thatched houses they could not possibly say more than that they agreed with the Judge. And if two peasant women squabbled at the well, the one who was worsted in the interchange of abuse would put a hot coal in her neighbour's thatch by nightfall. I remember a case where a zemindar who tried to keep a grass rick had his house thrice burned to the ground by the Ahirs, who resented the curtailing of their grazing. And most of these cases were only heard of either by accident or by personal inquiry of Magistrates and European police officers when on tour. A rich majahan who had had his sister murdered for unchastity persistently had the houses of certain witnesses burned down time after time. A young Muhammadan woman took to arson apparently for the sheer fun of the thing, and was suspected of having set fire to the village more than 20 times in a single hot weather. And nothing would induce the police to report these cases. They simply passed the word to the chaukidars that such things were not to be noticed. And no one else dared say a word. The police know that in nine cases out of ten failure was certain, and were determined *not* to "*spoil their nakshas.*"

Where such a state of things exists it is clear some such measure as that contemplated is required. It will be understood that all the cases I have mentioned were cases of fire-raising in dwelling-houses; the burnings of stocks of wheat or barley on the threshing-floor were innumerable. The proper remedy is in my opinion to lay a special rate on the zemindars of the neighbourhood.

If the zemindars do their duty and assist the police, this sort of thing would be stopped at once: but unfortunately the legal obligations of the zemindar have been gradually allowed to become *quasi* obsolete, and the Magistracy has been deprived of one of its most valuable instruments in the suppression of crime.

From D. T. ROBERTS, Esq., Magistrate and Collector, on deputation with Police Commission, to Secretary to Government, North-Western Provinces and Oudh,—dated the 16th July 1890.

I have the honour to submit my opinion on the papers referred with your No. $\frac{441}{\text{VIII-185A-2}}$ dated 24th June 1890.

2. *Surveillance of habitual offenders.*—Rules on this subject already exist in these Provinces, *vide* Police Manual, page 177 *et seq.*, for time-expired convicts, convicted of—

Dakáiti.	Theft by poisonous drugs.
Thaggi.	Cattle theft.
Highway robbery.	Ordinary theft on second conviction.
Burglary.	Coining and uttering false coin.

Receiving stolen property on second conviction.

A thana register is kept up of all such time-expired convicts; but the limited degree to which surveillance is authorized is indicated by the following rule:—

> "The prisoners should not be watched as bad characters. . . A note once in three months should be made in the register against each time-expired convict showing the result of inquiry into his manner of life, occupation, conduct and character."

The scrutiny thus directed extends over a period of three years, unless there are reasons for prolonging or shortening it.

3. As noticed in the end of paragraph 3 of the Government of India's letter, surveillance is also exercised over convicts released from the Andamans under the rules prescribed by the Government of India.

4. I am decidedly of opinion that powers of stricter surveillance as proposed in the Punjab Bill should be granted, and I would go further, and extend the authority of the Courts to order surveillance, not only over habitual offenders as defined in that draft Bill, but over all persons convicted of the serious offences noted in paragraph 2 who are at present registered and after a fashion watched.

5. It is not necessary in my opinion to wait for a second conviction in such cases. The circumstances of each case will sufficiently enable the Court to judge whether the convict is a dangerous character who should be kept under observation after discharge.

6. The proviso that surveillance under the rules to be prescribed shall only be exercised under the order of the Court or Magistrate convicting seems to be a sufficient guarantee that it will not be needlessly commanded. There are dakáitis, for instance, such as grain robberies in times of distress, or agrarian riots attended with the theft of produce of disputed lands, in which the Court would hold that the convicts are not of a dangerous character over whom surveillance is necessary after discharge from prison. There are others in which the dakáits are plainly habitual robbers and a terror to the country, although never previously convicted. The Courts would discriminate between these cases just as under the draft Bill they will discriminate even in cases of second conviction, and not unnecessarily or as a matter of course order surveillance.

7. Whether the degree of surveillance should be according to the existing rules under the Criminal Tribes Act, or the milder rules under the Government order relating to ticket-of-leave convicts, is a detail I am not called upon to discuss. Large powers should be granted in the law with discretion to the local authorities as to the extent and mode of their application.

8. I think it probable that the amended law in the case of habitual offenders may prove less severe in restraint of personal liberty than the existing law, while at the same time it will afford more effective protection to the public. A resort to exemplary punishment under Section 75 of the Penal Code will not be so frequently necessary, and a sentence of imprisonment within a Magistrate's power to inflict, coupled with a term of strict surveillance, will often be considered as effective as a long term of imprisonment, and will not be so offensive to public opinion. Uninstructed public opinion is occasionally outraged by the severity of sentences passed in petty theft cases on habitual offenders. The disproportion between the offence committed and the punishment awarded is plainly seen; but the reasons for a severe sentence are not known or appreciated, and never will be, and thus a false impression is spread that our Courts are sometimes vindictive or oppressive. Nor are our Courts and Magistrates themselves impervious to such feelings. To Native Magistrates in particular, though not to them alone, it is in a high degree repugnant to pass exemplary sentences in cases of second conviction, when this second offence is not in itself one of great heinousness. This repugnancy is the reason why "Section 75 has not always been used by the Courts in a manner calculated to deter habitual criminals from crime" (*vide* last sentence, paragraph 2, of the Government of India's letter).

9. In this connection I think it would be well to consider the proposal made by the Madras Government to facilitate the passing of exemplary sentences under Section 75 by making the procedure similar to that in cases where a subordinate Magistrate considers that a sentence should be passed beyond his powers to inflict. I consider this suggestion an admirable one, for saving the time of the Judges, and for releasing complainants and witnesses from the harassment of attending sessions in petty cases. The habitual thief caught at a fair, for example, would receive the punishment proper to him without the necessity of bringing the complainants and witnesses, months after, from distant districts. The hardship to the parties and the difficulty of ensuring their attendance at sessions is not unfrequently a reason for non-committal to the sessions of habitual offenders. I would observe, however, that the suggestion will be rendered nugatory if it rests on the prisoner's option, and not on that of the Judge, to summon complainant and witnesses for re-examination. The simplified procedure thus proposed is analogous to that prescribed in Section 123 of the Criminal Procedure Code, enabling a Judge upon the Magistrate's record to order imprisonment up to three years in default of security for good behaviour.

10. *Surveillance of bad characters.*—There has always seemed to me a logical inconsequence or *non sequitur* in the provisions of the law relating to the exaction of security from bad characters. And I beg to be excused for pointing this out at some little length, in order to justify my opinion that the law should be supplemented by provisions for the surveillance of bad characters, and that ordinarily surveillance should precede or be substituted for imprisonment in default of security.

11. Precisely similar to the law relating to the demand of security from bad characters is that relating to security for keeping the peace, and my argument can be conveniently illustrated by comparing the effectiveness and sufficiency of the provisions in the latter case with the failure and in consequence of the provisions in the former.

(1) *In the one case* (keeping the peace) security is usually forthcoming, *in the other* it is usually not forthcoming.

(2) *In the one case*, if security is given, the object of the law is fully attained. The sureties see to it that their man keeps the peace, for if he fails to keep his promise, his conviction and the consequent forfeiture of his bail are tolerably certain.

In the other case, if security is given, one of two inferences is tolerably certain. Either the accused is not a man of bad character within the meaning of Section 110, and the demand for security is superfluous and oppressive; or the sureties, if the man is really an habitual offender, are protectors of the accused, and share his nefarious gains, and they give bail for him for that reason, and because his conviction for an offence within the term of their bonds is extremely unlikely. In such cases, the accused has not been in the habit of committing offences within the district in which he resides. He wanders far afield, and when security is given for him, he wanders off again, and even if convicted elsewhere he may conceal his identity and save his sureties. Rare is the case in which a man of respectable position will give bail for an habitual thief with the intention of reclaiming or restraining him. If security is furnished, therefore, the object of the law is not attained: for either the proceedings are superfluous or the intention of the law is frustrated.

(3) *In the one case*, the terms of the bond "not to do any act that may probably occasion a breach of the peace" enable the Magistrate to forfeit the bond on the first appearance of turbulence without any previous conviction for an actual offence committed.

In the other case the bond cannot be forfeited on mere failure to be of good behaviour as judged by general evidence of character; a specific offence must be proved (Section 1?1, Criminal Procedure Code): hence the efficiency of the bond in the one case and its general uselessness in the other. If the terms of the bond for good behaviour were, however, extended, then it is absolutely certain that no one would ever give security for an habitual offender.

(4) *In the one case*, if on default of security imprisonment follows, the object of the law is still attained. The accused is restrained from committing a breach of the peace during the time he is at all likely to do so, and on release he will certainly have cooled down, or the occasion leading to riots, etc., will have been removed, or he will be afraid to commit a breach of the peace because he knows the great probability of a conviction and of a severe sentence.

In the other case the accused is certainly restrained for a time from committing offences, but his character is not changed, and his opportunities for gaining an honest livelihood, if he were so inclined, are rather diminished. The man being the same and his reputation in no way altered, there seems to be no reason why further security should not be demanded and further imprisonment awarded. So that a man of this kind might spend much of his life in jail though never convicted of any offence. In contravention of the judicial axiom that no man shall be punished on mere suspicion or except on proof of an offence committed, it is

permitted to send a man to prison for a term precisely equal to a sentence on conviction for theft or robbery. It is no answer to say that the accused has the option of giving security. He has no option, for no one (not an accomplice) will give security for him; we might as well give him the option of passing the B. A. examination.

12. From this comparison it may be seen that the law is one of an anomalous character, and it may with perfect correctness be described as a law which creates a specific offence, the offence of being a reputed habitual offender, and awards a punishment for that offence with the proviso that it shall be an irrebuttable defence to the charge if two respectable persons depose in favour of the accused and prove the sincerity of their deposition by going bail.

13. It is this anomalous character of the law, and the feeling that it is a punitive and not a preventive measure, which accounts for the spasmodic and unequal action of Magistrates in regard to it. It is easy to begin; where to stop is the difficulty. It is felt to be an impossible measure to imprison all the reputed bad characters of a district. And if all were imprisoned the state of things would be the same again at the end of a year, with just the difference that the discharged host would probably be more reckless and lawless than before. It is a sense of this difficulty which has led to such special legislation as the Criminal Tribes Act. Every adult male member of the tribes proclaimed is liable under the Criminal Procedure Code to imprisonment as an habitual thief; but special measures of surveillance are being tried, because the ordinary law could not be enforced against all of them without revolting the public conscience, and because, if enforced, no good result would follow.

14. For these reasons, therefore, I am of opinion that the principle of surveillance should be extended to all persons liable under the Code to be called upon to furnish security for good behaviour. As every person thus brought under surveillance is given an opportunity of clearing his character before a Magistrate, the objections taken by the High Court to a public register of mere suspects, in the judgment referred to in the Government of India's letter, do not apply. Their objections are, to quote the judgment, to a register in which "the matter recorded is not confined to facts which have been ascertained by fair and open investigation in courts of justice."

15. Nothing in the proposed legislation directly meets the difficulty of obtaining evidence against bad characters, but it is probable that a long period of strict surveillance will render witnesses less afraid of and less open to the revenge of the bad character against whom they are called upon to testify.

16. *Special liabilities of the inhabitants in disturbed tracts.*—The proposal of the Punjab Government in this regard does not seem to me to have any applicability to these Provinces. Take cattle-poisoning for instance. In 1873-74 a very extensive conspiracy to poison cattle for the sake of their hides existed in the Benares Division, and was especially rife in Gorakhpur. An account of it will be found in the Proceedings of Government in the Judicial (Criminal) Department for March 1874. It was fostered by traders beyond the Provinces, and Chamars all over the country were engaged in it. As soon as the real cause of the apparent murrain among the cattle was discovered there was no difficulty in stamping out the conspiracy under the ordinary law. The special measure proposed by the Punjab Government could not have been applied. The criminals were not located in any one tract; all the Chamars were implicated, but it would have been monstrous to hold liable to pay compensation the other inhabitants of the villages where the Chamars lived: nor could any money have been recovered from the wretched Chamars.

17. And as to arson I cannot call to mind any cases of incendiarism in dealing with which this proposal would have been of any use. The deputation of special police under Act V of 1861 has been found usually sufficient to restrain the local hostilities which find vent sometimes in rick-burning.

From G. A. TWEEDY, Esq., Sessions Judge, Bareilly, to Secretary to Government, N.-W. Provinces and Oudh,—No. 230—VIII, dated the 15th July 1890.

With reference to your letter $\frac{441}{\text{VIII—185A-2}}$, dated 24th June 1890, I consider that a distinct necessity exists for the suggested legislation, and that the principle of the proposals seems unexceptionable. The need for a system of police supervision such as is in force at Home must have occurred to every one who has to deal with habitual criminals. Of course a certain amount of surveillance is in force at the present time, and the village chaukidar often pays domiciliary visits to bad characters; but the system needs greatly extending and improving and placing on a legal footing. The rules to be made under Section 7 of the draft Act appear to provide for everything that can be done in this direction.

2. The principle of sentencing a man who fails to find security for good behaviour to police supervision in lieu of imprisonment appears an excellent one.

3. The principle of repressing offences by the assessment of compensation in localities where they are exceptionally prevalent is a very good one, and if carefully supervised may be worked with the best results. I see no reason why it should be confined to mischief and arson, which are perhaps not especially destructive in these Provinces. The principle might be applied with great advantage to an offence lately rife in these Provinces, that of dakáiti. Very often the dakáits are countenanced and encouraged by zemindars of outward respectability and position, and their tenants consequently will not come forward to give information. If the villagers know they would have to pay for every undetected dakáiti their sentiments would probably undergo a change. The only danger in the working of this principle is that it may lead complainants to exaggerate their losses in order to make a good thing out of the compensation, and instances are not unknown where they have actually in the same hope refused to identify their own property. The principle might also be applied to cattle theft.

I do not think it is necessary to him in the granting of this power with such restrictions as attend the appointment of punitive police. I think the Magistrate with the sanction of the Commissioner should have power to fix the limits of the area and to apply the principle.

From E. Rose, Esq., Magistrate of Mainpuri, to Secretary to Government, N.-W. Provinces and Oudh,—No. 435, dated the 15th July 1890.

I have the honour to reply to your No. $\frac{441}{\text{VIII—185A-2}}$, of the 24th June 1890 (which was received by me in camp on the 5th instant), in which I am honoured by the request of my opinion upon certain legislation with reference to the surveillance of habitual offenders, and upon the proposals to that end which have been submitted to the Government of India by the Punjab Government.

2. I think that the necessity certainly exists for some more stringent surveillance of habitual offenders than that for which the existing law provides. Section 110 of the Criminal Procedure Code empowers Magistrates to demand security from persons who are habitual robbers, house-breakers, or thieves, or habitual receivers of stolen property, or who habitually commit extortion, or in order to the committing of extortion habitually put persons in fear of injury. The law does not however define what a *habitual* offender is, and although it provides (Section 117) that the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise, yet when action is taken, the evidence produced is in nine cases out of ten of so vague and unsatisfactory a character that no Magistrate would feel justified in accepting it as sufficient to justify the demand of security. If the law provided, as I venture to think it should, that a person who had on two or more occasions been convicted of certain offences should for the purpose of Section 110 be treated as an "habitual offender," there would be little difficulty in enforcing it, but even in that case it would fail to reach the larger class of persons who are quite as dangerous to society, if not more so, than convicted criminals are—the offenders who have never been convicted. In this respect the proposed legislation is, as it seems to me, equally defective (*vide* Section 2 of the Punjab draft Bill). The surveillance which the Bill proposes is the surveillance of offenders who have been convicted of certain offences on two or more occasions, but it would fail to reach the equally dangerous class, who on two or more or many occasions have committed the same offences and have in one way or other escaped conviction.

3. The principle of surveillance is theoretically a good one. An "habitual offender" does not deserve much consideration; to suppose that the discipline of an Indian jail is likely to work a moral reformation in his character is a supposition which is contradicted by daily experience; the only way in which imprisonment upon a second conviction is likely to prevent the offender from the future commission of crime is not so much by its duration as by its severity, and unfortunately there is much to be desired in the severity of the discipline of an ordinary jail. As a fact the twice convicted offender has little dread of imprisonment: he dislikes the loss of his freedom and he dislikes the compulsory labour exacted from him; but with the many chances in favour of the non-detection of any future offence he may commit, and he may and probably has learnt much of the chances of non-detection, or at any rate of the way in which detection may be prevented from leading to anything worse, it is almost a certainty that the habitual offender will, upon the expiration of his sentence, resume the career of crime which the sentence has interrupted. The "habitual offender" belongs to a class apart, and exceptional laws must be made for dealing with him; it is idle in face of the fact that many of the more serious crimes, the dakáities, robberies, burglaries, cattle-thefts which swell the criminal calendar,

and which the police so frequently fail to detect, are the work of the habitual offender, to talk of improper restraints upon his freedom or the prevention of his moral reform.

4. The proposed legislation appears in substance to apply to "habitual offenders" the provisions which Act XXVII of 1871 applies to the criminal tribes which come within its operation. There is no more dangerous criminal tribe in existence than the class of "habitual offenders," but I fear there may be in practice the same difficulties in the way of their surveillance as experience has proved to exist in the surveillance of the criminal tribes under the law of 1871. This is however a question of which the criticism is not desired.

5. It does not follow of course that every "habitual offender" would be placed under surveillance upon the expiration of his term of imprisonment. The discretion of the Magistrate should guard against any undue exercise of the measures of restraint which the law would provide. There are many exceptional circumstances which in particular cases would make it unnecessary to place under surveillance an "habitual offender" as defined in Section 2 of the Bill. With this safeguard the proposed legislation seems to me to meet a desirable end. Much of course depends upon the rules for which provision is made in Section 7 of the Bill, and much more upon the way in which these rules are maintained in practice. With an improved police it is possible that the rules would be better worked than existing rules on other subjects are; but in this as in other respects everything depends upon the energetic administration of the higher police authorities. I would note that the principle of surveillance is acted upon under the existing police rules, but the practice has never been legalized. Police Circular No. 38 of the 26th December 1868 provides for the registration and surveillance of time-expired convicts, but there are few districts in my experience in which the surveillance has been much more than a name. With legislation to enforce it, and with stringent rules to indicate the way, it would probably become a reality.

6. Upon the general question of surveillance I am therefore in favour of the proposed legislation. There are many questions of detail to which the Bill gives rise, but upon these no criticism is desired, and I do not therefore further refer to them.

7. The Bill also provides in its 12th section for the assessment of compensation, where cattle-poisoning and incendiarism have been committed and no offender has been traced within three months, upon the localities in which it has occurred. The provision is somewhat similar to that contained in Section 15, Act V of 1861, in respect of the imposition of a special police force where any locality is in a dangerous or disturbed state, or where the conduct of the inhabitants makes the course expedient. The levy of compensation upon a locality where crimes have been committed, because the offender cannot be traced, is scarcely consistent with the strict principles of abstract justice. There might, it is true, be exceptional conditions where the course would be a proper one to adopt, but I could scarcely conceive its adoption in any locality where crime of the character referred to had not become so rife or the administration so weak that the ordinary law had been found wanting. The objection to legislation of this kind is that it involves, and that it must necessarily involve, injustice; it is a crude and primitive mode of repressing crime, and it opens the door, as all forms of direct taxation in India do, to fraud. At the same time, as the section can only operate under the order of the Local Government, there would be sufficient security that it would be brought into action only under the exceptional circumstances which would justify it. I doubt, however, whether in these Provinces such an addition to the criminal law is required.

My opinion upon the proposed legislation is therefore briefly as follows: I am entirely in favour of the principle of surveillance; but I think that the Bill is defective in that it in no way extends the provisions of Section 110, Act X of 1882, to meet the case of habitual offenders who have never been convicted of an offence; but I doubt the policy or the necessity of the exceptional provisions in respect of compensation contained in Section 12 of the Bill.

From W. R. BURKITT, Esq., Officiating Judicial Commissioner, Oudh, to the Secretary to Government, North-Western Provinces and Oudh,—No. 1092, dated the 16th July 1890.

I have the honour to acknowledge receipt of your No. $\frac{441}{\text{VIII—185A-2}}$ of the 24th ultimo, and No. $\frac{1701}{\text{VI—600B}}$ of the 10th instant, and in reply to state as follows.

As to the first mentioned, the proposals contained in the Punjab Government Bill would have the effect of legalizing a procedure which (as every one who has been a District Magistrate knows) prevails throughout the North-Western Provinces, where every thana has its list of time-expired returned convicts. The only thing required is that the police surveillance should be a reality and not a sham as it is, I fear, now in many cases. Whether the system

can be made successful or not will depend on the rules which the 7th section of the Bill gives power to make.

2. Some measure which will legalize and improve the present system is much to be desired. At present the returned convict may with impunity disregard all attempts to keep his movements under surveillance, the Magistrate and the police being legally powerless to exercise the slightest control over him. And as a recent case has clearly shown, it is no longer safe for energetic officers to act in excess of the powers with which they are invested by law even with the laudable object of preventing crime. So in every way I most cordially approve of the proposed surveillance of time-expired convicts who are habitual offenders.

3. I would venture to make one suggestion, which it seems to me is essentially required, and for which no provision appears to be made in the Bill. The practice in releasing time-expired convicts, I understand, is that they are released at the jail gate and provided with a small allowance of money to reach their homes. But they are not compelled to return to their native village. No doubt most of them do return, but a considerable minority take care to avoid the place where they are well known. They are practically lost sight of on leaving jail; they appear in the thana register as not having returned to their homes, and nothing is known of their future movements unless they happen to be identified should they be caught committing some other offence. I would suggest that a habitual criminal on release from jail should a few days before the expiry of his term be sent to the jail of the district in which his permanent home is situate, and thence made over to the local thana for release, subject to the surveillance rules.

4. With regard to paragraph 2 of the Government of India No. 1—421 of May 31st, I can only express my great regret that the large powers with which Magistrates were armed under Sections 505 and 506 of Act X, 1872, were not continued in the new Code of 1882. As District Magistrate in the North-Western Provinces from the time the latter Code came into force down to August 1887, I had not unfrequently occasion to lament that my hands had been much weakened by the change in the law. I have no doubt that every District Magistrate would be glad to see the preventive sections restored to their former efficacy.

5. Finally, with reference to the second of your letters under reply, my experience as Sessions Judge of one of the largest (if not the largest) sessions divisions in the North-Western Provinces is entirely in conformity with the views expressed by the Madras High Court. I quite agree with that Court as to the unnecessary hardship entailed on witnesses in having to travel long distances and dance attendance at the Court of Sessions on petty cases. And it does seem absurd that all the formalities of a sessions trial, committal, order, calendar, assessor's verdict, etc., should be required simply because the accused has made himself liable to a penalty which a Magistrate is not empowered to inflict.

6. But with deference I am not prepared to support the change in the law which the Madras High Court recommends. In my opinion the true remedy will be found in a more extended use of the provisions of Section 34 of the Code of Criminal Procedure, which have been found so useful in Oudh and other non-regulation provinces. I would suggest that in the case of accused persons liable under Section 75 of the Penal Code to an enhanced punishment, the Magistrate of the district should be empowered to pass sentences of transportation and imprisonment up to seven years. If in any case he thought that the sentence should exceed seven years, a committal should be made in the ordinary way to the Court of Sessions. Such cases would not be numerous. The District Magistrate's sentences should be subject to confirmation by the Sessions Judge as provided by Section 34.

7. I would confer these powers only on the Magistrate of the district, but I would amend Section 349 of the Criminal Procedure Code so as to enable a first class Magistrate to refer to the Magistrate of the district any case which in his opinion ought to be dealt with under the District Magistrate's enhanced powers.

From H. G. PEARSE, Esq., Additional Sessions Judge, Meerut, to Secretary to Government, N.-W. Provinces and Oudh,—dated the 18th July 1890.

In reply to your No. $\frac{441}{\text{VIII—185A-2}}$, dated 24th June 1890, on the subject of the necessity for legislation for the surveillance of habitual offenders, I am of opinion that most certainly legislation is required.

In my opinion the proposals of the Punjab Government are sound as far as they go, but they hardly go far enough. The difficulty would be in providing a machinery for tracking and localizing criminals under surveillance if they broke away. The district police frequently know to a practical certainty that certain men or even certain castes leave their homes periodically on plundering expeditions; but there is no detective force available to follow them, and

no money available to enable detectives to follow the men or to obtain information as to their destination and pursuits from within the gang itself. These men return as gently as they went away, usually in more affluent circumstances, but even if their plunder is still in a recognizable form there is no clue by which the police can start inquiries. The gang's beat may have been anywhere in India.

Under any system of surveillance unaccompanied by a system of tracking these habituals would break away just the same, but they would not return to their own locality, and in the new one, without knowledge of their previous antecedents, some time would probably elapse before they would lay themselves open to be dealt with under any system of surveillance that could be started.

To make surveillance effective in another way, considerable reform is required in the direction of watching principal lines of railway, especially those leading to commercial or pilgrim centres. What is required is not merely a stationary police at the termini, but skilled detectives in plain clothes travelling up and down the line. The habitual criminal usually alights one or two stations before his point of operation, and either comes on quickly in an *ekka* or walks on in a perfectly unobtrusive manner.

To be effective any surveillance Act must in my opinion be purely administrative. District Magistrates and Deputy Commissioners must be trusted with full powers under it without any system of appeal. There is also a financial side to the question. I do not see how any surveillance can be effective without a large central expenditure which would have to be to a considerable extent discretionary. It would be impossible for a police officer to follow a gang to an unknown destination without a certain elasticity of expenditure. This would become less and less yearly as the provincial police forces acquired greater knowledge of each other and learned to play more into each other's hands.

In short, I am of opinion that, while legislature on the basis of the Punjab proposals will bear excellent fruit, once the criminals they are meant to trace are traced out and classified, until a system of tracking, improved detection, and intelligent surveillance of railways and other mode of communication is in working order, the proposed legislation is bound to fall short of its object.

From R. S. AIKMAN, Esq., District Judge, Farukhabad, to Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{274}{XV}$, dated the 16th July 1890.

I have the honour to acknowledge receipt of your No. $\frac{441}{VIII-185A-2}$ (Police), dated 24th ultimo, and to state that in my opinion the necessity for legislation on the lines suggested is indicated by the fact that in a settled Government like ours the commission of crimes by habitual offenders shows no tendency to decrease. I consider that a well-devised system for the surveillance of habitual offenders would result in a marked diminution of offences against property, though at first the working of the system would require careful watching to prevent oppression. My experience is quite in accord with the opinions expressed in the papers appended to your letter regarding the insufficiency of the security sections of the Criminal Procedure Code to meet the evil aimed at.

In connection with the punishment of habitual criminals, I would invite attention to Sections 348 and 349 of the Criminal Procedure Code, and would strongly urge an extension of the provisions of Section 30 and Section 349, Criminal Procedure Code, so as to obviate the necessity for all cases under Section 75, Indian Penal Code, being committed to sessions.

So far as my experience goes there is no necessity in these provinces for Section 12 of the draft Act, but I have often thought that a similar provision for levying compensation from the inhabitants of villages and townships in which dakáitis are committed would be a wholesome measure. The usual course of things in such cases is that a gang of 10 or 20 men boldly enters a village or town, fires off a shot or two from a rusty matchlock, not aimed at any one but merely to make a noise, and then proceeds in a leisurely manner to loot the house of the victim they have selected without any other inhabitant of the village making the slightest attempt to arrest, identify, or follow up the offenders.

From F. N. WRIGHT, Esq., Magistrate of Cawnpore, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 853, dated the 21st July 1890.

In reply to your No. $\frac{441}{VIII-185A-2}$, dated 24th ultimo, I have the honour to state that I have given the draft Bill received therewith my very serious consideration, and have also consulted the District Superintendent of Police.

2. I am of opinion that such an Act would be of the greatest benefit, and in this opinion Mr. Parsons (an experienced Police Officer) fully concurs. Detailed criticism is not invited, so I refrain from saying more except to add that circumstances connected with paragraph 11 of Government, Punjab's letter, and which would appear to call for legislation in that Province, have not come under our observation in the districts in which we have served, and therefore we offer no opinion on this point.

3. I should welcome such a measure as proposed, as strengthening the power of Magistrates to deal with habitual offenders and to put down habitual crime.

From H. F. EVANS, Esq., District Judge of Moradabad, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{151}{\text{VIII}}$, dated the 21st July 1890.

In reply to your No. $\frac{441}{\text{VIII}-185\text{A}-2}$, dated 24th June, asking for my opinion on the question of the necessity for the legislation suggested by the Punjab Government and referred to in paragraph 4 of the letter of the Government of India, I have the honour to submit the following remarks.

2. It is proposed that under certain conditions the inhabitants of a village or a tract should be rendered liable to make compensation for the injury caused by certain offences when the guilty persons cannot be traced. It is, I think, clear that such a procedure has obvious defects. In the first place, it must inevitably involve many perfectly innocent persons in punishment even if it succeeds in reaching some of those who are guilty. In the second place, it must have a deteriorating effect on the working of the police. It would be extremely difficult to apply it without encouraging the police in a want of perseverance in their efforts to trace the offenders. Their efforts would, I fear, be directed rather to convincing the Magistrate of the District, and through him the Local Government, who would practically have to rely on information derived through the police alone, that the inhabitants of the village or tract were conniving at the offences and concealing information.

It is therefore very necessary that the circumstances under which it is proposed to make use of these provisions should be such as to justify such extreme and unusual measures. In this instance it is proposed to adopt them to put a stop to the offences of cattle-poisoning and incendiarism.

It is argued that "some such provisions are very necessary because offences of this nature are very rife in certain parts of the Punjab, while the detection of them is very difficult, not *only because it is not easy to produce satisfactory evidence in Court of crime which can be committed by one person on a very dark night*, but also because although the perpetrator is often known to the villagers, no one dares to come forward and give evidence lest a similar fate befall his own property."

Now to punish the general body of the inhabitants because the offenders cannot be traced would only be justifiable if those inhabitants were shown with reasonable certainty to be actually able (even if unwilling) to give information leading to the detection of the offenders. But surely the very facts stated in the argument quoted above distinctly show that the silence of the villagers is due, not to a want of willingness, but to a genuine inability to give that information. Why should they be punished because they do not furnish evidence of a crime, which evidence, it is admitted, is from the nature of the case very difficult to obtain? It is not asserted that they conceal such little evidence as may be obtainable.

The proposition that in such cases the perpetrator is often known to the villagers is, I think, inaccurately expressed. The fact may be that in such cases the villagers have shrewd *suspicions*, from the character or circumstances of certain individuals, that they are the offenders, but they do not *know*, *i.e.*, they have no evidence which they can produce to justify those suspicions or to prove a charge based on them. There is nothing to justify them in formulating a charge against those individuals; there is no evidence that they are keeping back. I therefore fail to see what there is to justify their being rendered liable to compensate the victims of the offences.

Moreover, if the real cause of the silence of the villagers is, as it would seem to be, the fact that there is no evidence of the offences, and not a concealment of that evidence, what would be gained by the levy of these fines on them? Nothing but the compensation of the individual at the expense of his neighbours. It would not lead to the detection of the offenders. On the other hand, the first and obvious result would be to supply a direct and powerful incentive to perjury and the fabrication of false charges. As matters stand the villagers are unable to justify their suspicions against individuals by producing evidence, however strongly they may feel those suspicions: and as there is nothing to be gained by accusing those individuals on suspicion, they naturally keep silence, and put up with the injuries they

have sustained. But if the consequence of their keeping silence is to be the imposition on them of a fine for the compensation of the particular individual injured, because *no one has been punished for the offence,* they will be sorely tempted to secure themselves against the second loss by producing evidence for the conviction of some one or other.

In conclusion I submit that whatever be the case in the Punjab, in these Provinces incendiarism or cattle-poisoning (or at any rate the former) is not sufficiently widespread to call for any such provisions as those in contemplation.

From H. B. FINLAY, Esq., Magistrate of Agra, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1231, dated the 19th July 1890.

I have the honour to reply to your No. $\frac{441}{\text{VIII}-185\text{A-2}}$ of the 24th ultimo and its enclosures.

The draft Bill which has been submitted by the Punjab Government to the Government of India deals with two subjects, both criminal, but quite distinct, *viz.*, the surveillance of habitual criminals and the prevention of special kinds of mischief, *i. e.*, cattle-poisoning and arson.

2. With regard to the latter, it seems to me that no special legislature is required in these Provinces, for the offences against which it it proposed to legislate are neither on the increase nor are they so generally prevalent as to be formidable to the public. In paragraph 11 of the Secretary to the Punjab's letter we learn that in five years the number of cases of serious mischief more than doubled, but even a total of 1,156 such offences in one year does not seem so abnormal a figure as to render special legislation expedient. We cannot give the corresponding figures exactly for the North-Western Provinces and Oudh, because in our annual returns the classification is different. But taking the crime of cattle maiming and poisoning alone, *viz.*, Sections 428 and 429, Indian Penal Code, the returns show that from 1884 to 1888 the highest number of such cases was 546, and the lowest 482; while the average is 515·6, a number which cannot be considered as formidable in so large and populous a territory. Taking the same period we find that the average of class 34, which includes the other forms of mischief and one or two miscellaneous offences, was for the Provinces only 1,524·0 per annum. It is a matter of notoriety that the offences of cattle-stealing and burglary are ten times as numerous as those of cattle-poisoning and arson, and yet no proposals for special legislation are put forward for them, although the injury inflicted by the perpetrators of these offences on the public in general is very much greater than what is inflicted by the comparatively rare offences of cattle-poisoning and arson.

3. I desire also to point out that the proposal to punish the inhabitants of the locality in which the crimes of cattle-poisoning and arson are rife is open to most serious objection. Cattle-poisoning, when it is not an isolated offence, is the work of professional criminals, usually Chamars, who are impelled to the crime by the high prices of hides, etc. The inhabitants of the locality where the crime occurs are the greatest sufferers by the outbreak of the crime, and to inflict fines on them would be the strangest form of prevention. In nine cases out of ten the hides of dead animals are the perquisites of the village Chamars, who sell them for what they will fetch. Years ago in Azamgarh in pargana Sikandarpur we had an outbreak of cattle-poisoning, but it was speedily checked and extinguished when we ordered that the hides of all animals suspected to have died of poison should be cut up into strips and so rendered unmarketable. The Chamars were furious, but this crime ceased. And with regard to arson, it in 99 out of 100 cases is the result of personal spites and enmity, and not an offence to perpetrate which becomes a profession. Moreover, if it were known that by law a person whose house is burned down could claim the value of it and its contents from his neighbours, we might, and most probably would, have a series of wholesale frauds on the same lines (only adapted to local circumstances) as are known as insurance frauds at home. For these reasons I would deprecate special legislation for cattle-poisoning and arson on the lines proposed by the Punjab Government.

4. The case, however, is very different with surveillance of convicted criminals. The hands of the police and the Magistrates can be strengthened with regard to them on the lines of the proposed legislation, and this with very great advantage to the public. The experience of the working of such an Act at home is now sufficiently great on which to base a decided opinion as to the usefulness or otherwise of such a measure; and I suppose it is superfluous to say that at home the system of surveillance has been found to work well. The fact that from time to time, *i. e.*, at long intervals, cases have been brought to notice in which these powers of surveillance have been misused by the police, only emphasizes the fact that in the great majority of cases they are not misused. It is unnecessary to remark on the admitted differences between the police out here and the police at home. The details of any system of surveillance

permitted here will be arranged so as to suit local circumstances. I think there can be no doubt of the validity of the general principle underlying the proposed legislation, *viz.*, that presumably a man who has been twice convicted of offences against property or coining is not to be lost sight of whenever he gets out of jail, but in the interests of society should be watched for a considerable time afterwards.

5. The Government of India, in its paragraph 3, seems to be unware that in addition to the so-called secret register of bad characters there is another one of convicted persons. I say the register of bad characters is *so-called* secret, because it is nothing of the sort and never can be secret. The regulations for keeping it up require that periodically the police should go and look for the men whose names are on the register, shall enquire into their doings and goings, and when this has occurred twice or thrice it is not, and cannot be, a secret that the man enquired about is on the bad character register. If the register is to be secret, there must be no periodical and semi-public inquiry as to the doings of those whose names are on it. I do not think the register should be given up, but I would alter its venue by removing from it all names of persons who have been convicted twice and transfer them to the register of convicted offenders, a measure by which the one register would not overlap the other as they constantly do now. I would have periodical inquiries about men in the convict register even if they are not brought under surveillance under the contemplated legislation, but I would have no periodical investigation about those whose names are in the bad-character register, although it would remain an important part of the officer in charge of the station's duty to keep an eye on these men and record anything worth recording about them. The contents of the register then *might* remain secret.

6. The two sections (10 and 11) of the Bill which require the village headmen, watchmen, etc., to assist in the work of surveillance are very valuable, but would be improved if a heavier penalty were inserted.

But I notice that detailed criticism of the provisions of the Bill are not invited. To sum up, I cordially approve of the proposal to have police surveillance over habitual offenders, but I strongly deprecate the proposed legislation against aggravated forms of mischief and arson.

From R. S. WHITEWAY, Esq., Magistrate of Meerut, to Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{1506}{I}$, dated the 22nd July 1890.

I have the honour to acknowledge the receipt of G. O. No. $\frac{441}{VIII-183A-2}$, dated 24th June 1890, forwarding certain papers regarding the surveillance of habitual offenders, and to reply as follows.

2. The District Superintendent of Police and myself are agreed in thinking that the present system, under which certain registers are kept up in the police stations, is, as at present worked, unsatisfactory. These registers are—

(*a*) Register No. 10, the confidential register of bad characters.

(*b*) Register No. 10A, of released convicts.

Certain wandering tribes are also watched by the police, but this watching is productive of little good; it is an easier life for the police if they side with the wandering tribe, and the tendency is for the watchers to become the guards of the wandering tribe and not of the public. It is understood that this subject, which is a very important one, is engaging the attention of the Government. It will be a fortunate day when a satisfactory solution of the gipsy difficulty is found.

3. Recent experience has shown that much reliance cannot be placed on village headmen or watchmen. Where they can be made to work with us their help is invaluable, but where they are indifferent from fear or restrained by interest, they are useless. In the case of the Aligarh Sansiahs, some few years ago, and probably in that of the *Kahars* of Dhaulri of this district now, the latter motive acts. In the recent dakáitis here, it was partly one motive and partly the other.

4. There is another difficulty in working provisions imposing duties on village headmen, and that is the interpretation that can be put on the law. Thus, lately, when an endeavour was made here to work the provisions of Section 45 of the Criminal Procedure Code, it broke in our hands. Setting aside the difficulty of getting any evidence, except the tainted evidence of the man's enemies, that a gang had stayed in a headman's village, there was the legal one that no man is a dakáit until a dakáiti has been proved against him. The only value of such a section is for speedy action.

5. The object to be aimed at is a thorough acquaintance with the habits of the criminal classes, and besides this we want to place some check on their taking advantage of the railways

and other means of communication to commit depredations in distant parts. To have to report at fixed times, at certain places, or to have to answer a roll-call at uncertain intervals, would be some check on the unrestrained movement of some few of them. So far this would be valuable, and it would also be some help to throw responsibility on village headmen and watchmen; but from these measures too much must not be expected. An experienced criminal gets things done for him.

6. More can, I think, be done in the way of intelligent police action, which should take the course of collecting information and perhaps "shadowing." One of the first steps would be to obtain a complete history of each man suspected, which could take the form of an extension of Register No. 10, this register remaining of course a confidential document. Too often, until recent years at least, these registers were filled with wooden imbecilities. It is necessary to know a man's friends and companions, his relatives, his habits, his physical peculiarities,—nothing could be too minute to be of some help.

7. And in this respect the assistance of photography could be more largely called in than is now done. Illiterate constables could not be expected to use or understand a photograph, but the higher officers would find it very useful. Take the case of the Dhaulri Kahars already mentioned. These men are petty thieves and pick-pockets, who go to fairs, chiefly in the neighbouring districts. When captured they give a false name and escape with a nominal punishment. If the whole clan were photographed, there would be more hope of detection.

8. Again, District Superintendents of Police should, on more general lines, note in a confidential diary all events bearing on the criminal history of the district. Well compiled, there could be nothing more valuable; some notes of this nature have been made for this district on the late dakáitis, and one of the duties of the punitive police is to collect further information for these notes.

9. "Shadowing" has been mentioned above, and properly done would be useful. The difficulty is that the man well acquainted with suspects would most probably be well known to them also. The object of "shadowing" would be to follow suspected criminals who are not under surveillance and over whom there is no legal hold, and warn the authorities of the districts for which they are making. For instance, it is well known that the Muzaffarnagar Bauriahs wander over the whole of India under different disguises. Working with the Railway Police, there should be no difficulty in following them wherever they go.

10. This kind of preventive detective work is almost new in India, and the small secret service grant now given to any district renders it impossible to buy any information as to the movements of suspected persons. This however is touching on a very difficult question, which is rather beyond the scope of this letter.

From H. FRASER, Esq., Registrar, High Court of Judicature, N.-W. Provinces, to Secretary to Government, N.-W. Provinces and Oudh,—No. 3494, dated Allahabad, the 26th July 1890.

I am directed to acknowledge receipt of Government Order No. $\frac{441}{\text{VIII—185A-2}}$, dated the 24th June 1890, asking for the opinion of the Court regarding the necessity for legislation for surveillance of habitual criminals, and to reply as follows.

In the opinion of the Chief Justice the suggested legislation, if carried into effect, would materially tend to check the commission of the crimes to which it applies. In England it was considered necessary to introduce similar provisions as to police supervision of habitual offenders, and if such provisions are necessary in England he considers that they are still more necessary in this country, in which the detective force is not so well organized as in England, and in which he fears there is frequently a disposition to shield criminals which is not found outside the criminal classes in England.

The suggested compensation clauses are, in his opinion, most valuable and are required, and if carefully and discreetly applied should be most useful, and he approves of the principles of the proposals.

For somewhat analogous legislation in England he would point to the Statute of Winton (13 Edw. I, Stat. 2, cl. 2), the Riot Act (1 Geo. I, St. 2, C. 5), the Black Act (9 Geo. I, C. 22) which was repealed by 7 and 8 Geo. IV, C. 27, and partially re-enacted by 7 and 8 Geo. IV, C. 31. See also 2 and 3 Will. IV, C. 72, and 7 and 8 Geo. IV., C. 31, and Roscoe's Nisi Prius Evidence, 15th edition, title "Actions against Harbourers, etc.," page 1124 *et seq.*

Mr. Justice Brodhurst, so far as he can judge from reading the annual criminal reports by District Magistrates and Sessions Judges, from reading his fifth share of the monthly sessions statements, and from hearing and disposing of a large proportion of the criminal appeals, is of opinion that there is no necessity for legislation for these Provinces such as is desired by His

Honour the Lieutenant-Governor of the Punjab for the territories under his control. He considers that there is no reason for doubting that all cases of cattle-poisoning and arson can be properly dealt with under the provisions of the Indian Penal Code, and that if Magistrates generally commit all habitual criminals brought before them for offences under Chapters XII and XVII, Indian Penal Code, for trial in the Court of Session, as there is reason to believe that, having regard to recent orders, they will now do, there will not be any need for further legislation even with regard to these classes.

Mr. Justice Young considers the proposal to place habitual criminals under police surveillance a good one, and that it is desirable that legislation should be employed to give legal effect to the scheme. He thinks, however, that two convictions—say for petty theft—are much too slight grounds upon which to adjudge a man to be a "habitual criminal;" and would, at all events for the present, restrict such surveillance to persons who have been convicted under Section 75, Indian Penal Code. The rules to be framed for such surveillance would, he thinks, require to be very carefully framed if they are not to degenerate into engines of extreme oppression.

He is of opinion that the proposal to make localities liable for payment of compensation to sufferers from crimes in which the residents of such locality are supposed on good grounds to be secret aiders and abettors, is an excellent one; but a law of this kind ought to be most carefully worked, and the Chief Magistrate of the district himself ought personally to carry out all the details of each instance of the infliction of the penalty. Such a punishment would have an admirable effect in repressing dakáitis in zilas like Mainpuri, Etah, Etawah, Farukhabad and Agra, where the dakáits notoriously have all the sympathy and much active help from the bulk of the rural population.

Mr. Justice Mahmud has found no leisure from his judicial duties to express an opinion, but hopes to be able to find time at the beginning of the vacation.

Mr. Justice Straight and Mr. Justice Tyrrell are at present on leave to England.

From F. B. MULOCK, Esq., Deputy Commissioner, Lucknow, to Secretary to Government, North-Western Provinces and Oudh,—No. 3887, dated the 29th July 1890.

In reply to your letter No. $\frac{441}{\text{VIII—185A-2}}$, dated 24th ultimo, forwarding, for an expression of my opinion, extracts from a letter of the Government of India to the Secretary to Government, North-Western Provinces, and a draft Bill regarding the surveillance of habitual offenders, I have the honour to state that the necessity for legislation in some form, with a view to legalize the control and surveillance of the criminal classes, has been a long-felt want.

The provisions of the draft Bill regarding domiciliary visits seem specially suited to secure this object.

I am strongly in favour of the Bill, and have no suggestoins to make regarding its provisions.

From JOSEPH DEAS, Esq., Sessions Judge, Cawnpore, to Secretary to Government, North-Western Provinces and Oudh,—No. 154, dated the 30th July 1890.

In reply to your letter No. $\frac{441}{\text{VIII—185A-2}}$, dated 24th June 1890, I have the honour to state that, for the reasons given in paragraph 4 of the letter from the Secretary to the Government of the Punjab, I am of opinion that the provisions of the Code of Criminal Procedure regarding security for good behaviour are inadequate for the due prevention of crime, and that under the circumstances it is expedient to supplement them in the manner proposed, *viz.*, by empowering a Court, on convicting and sentencing a "*habitual*" offender, to direct that he be subjected to police surveillance for a term of years. This provision is not, I think, open to any objection. The inclusion of the name of a habitual criminal in the "register" will not be made by the police *suo motu*, but will depend on the discretionary order of the Magistrate who convicts him, and this order will be subject to revision by the Appellate Court. The principle of subjecting convicted habitual offenders to police surveillance is recognised in England, and may well be extended to India in view of the difficulty now experienced in enforcing the provisions of Section 110, Criminal Procedure Code.

2. In my opinion, however, the suggested legislation regarding serious cases of mischief is not necessary or advisable in these Provinces.

From A. J. LAWRENCE, Esq., C.I.E., Commissioner, Meerut Division, to Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{10769}{XVII-30}$, dated the 29th July 1890.

In reply to your No. $\frac{441}{VIII-185A-2}$ of the 24th June 1890, I have the honour to say that in my opinion the police do require to be strengthened against habitual criminals; and secondly, I can see no objection to the principle of the present proposals.

2. The strictness with which the Judges now-a-days watch to see that the provisions of the existing law are observed, the tenderness which they show to the criminal classes, the rigour with which they treat the police, and the general idea which is abroad that judicial sympathies are with the criminal, and not with the protecting forces, all show that the legal powers of the police should be increased.

3. I am also of opinion that Magistrates should be required to use the existing laws against landowners, etc , in a way they do not now-a-days. It is not the fashion, from one cause to another, to proceed against harbourers, against landowners who do not give information, and in the same way the lethargy with which police officers and men use such power of surveillance as they have should be combated.

Police negligence in the matter of surveillance is perhaps due to the sympathy which the native mind has for criminals. Something more than the mere passing of an Act will be necessary ere a native constabulary exert themselves in a way that seems antagonistic to their very nature.

4. With the people against them, and the Judges—to say the least—unsympathetic, the hands of the police do require strengthening. I am not of opinion that the new feature proposed to be introduced,—the assessment of compensation,—need work harshly in India, and that because, however the police officers or men might think it an easy instrument to fall back upon, the procedure to obtain these powers would be so complicated, and there would have to be so many concurrent opinions, that in practice these sections would be seldom worked. How often is power to employ extra police taken? In my experience the practice has almost fallen into desuetude, and the quires a Magistrate has to write before he can obtain the imposition of extra police deters all but the most persevering. The police themselves could do nothing, and it is not always that their Magistrate will support their application.

On the whole, I am certainly of opinion that the meshes of the law should be widened, that the police are unequally weighted, and that however much we may like to attribute fraud and chicanery to the guardians of our lives and property, we must remember that there must be supineness elsewhere ere these qualities can succeed, and that with the little sympathy the public, Magistrates and Judges now have with the police force, cases of local outrage will have to be very fully established before local compensation will be awarded.

From F. W. PORTER, Esq., on special duty, to the Secretary to the Government, North-Western Provinces and Oudh,—dated the 5th August 1890.

I have the honour to acknowledge receipt of your letter No $\frac{441}{VIII-185A-2}$, dated 24th June 1890.

The points referred to me for opinion are practically as follows:—

(1) Is legislation for the surveillance of habitual offenders necessary in these Provinces? and

(2) What lines should such legislation take?

2. With reference to the first question, I think it will be conceded that, in the interest of the public, the magistracy should be armed with sufficient powers to enable them to inflict, or to procure the infliction of, exemplary punishment on persons who are proved to belong to the category of habitual offenders. It will further, I think, be allowed that the executive authorities, including the police, should, if they are to be of any real use in saving society from the depredations of habitual criminals, be invested with legal powers to control such criminals and to check them in their career of crime.

3. To make any suggestion on these points it is necessary to see, first, how the present law stands. As regards the powers of the magistracy, the present law on the subject is contained in Section 348, Criminal Procedure Code, coupled with Section 75, Indian Penal Code, and in Section 110, Criminal Procedure Code. The first two sections quoted lay down that Magistrates should commit habitual offenders to the sessions, and enable the Sessions Judge to sentence such offenders under certain circumstances to transportation for life.

Section 110, Criminal Procedure Code, enables Magistrates of certain classes to call upon habitual robbers, house-breakers, thieves or receivers of stolen property to furnish security for good behaviour for a period not exceeding three years.

4. The police have no legally recognised powers of control over habitual offenders. They keep up, it is true, two secret registers (10 and 10A) of released convicts and habitual offenders, and are supposed to exercise some kind of surveillance over the persons whose names are entered in these registers. They have, however, no legal power to interfere with them in any way, and their hands are the more tied inasmuch as the registers are *supposed* to be kept strictly secret, and should be for the information of the police only.

5. Now the faults inherent in the present system, such as it is, appear to me to be the following:—

(1) The means for securing the infliction of exemplary punishments on habitual offenders as provided by Section 348, Criminal Procedure Code, and Section 75, Indian Penal Code, are both cumbrous and dilatory. Complainants and witnesses have to be dragged before two Courts, and examined and cross-examined twice over. The necessity for commitment causes such delays that it is often impossible for Magisterial Courts to avail themselves of this procedure, in view of the enormous inconvenience, trouble and expense caused to both complainants and witnesses. These delays are also a fertile source of cases against habituals breaking down before the sessions; the interval between the commitment and the sessions trial being taken advantage of by the friends of the accused to bribe or intimidate the witnesses for the prosecution.

6. I have myself frequently come across cases in which these difficulties have actually occurred. Take, for instance, cases of habituals caught robbing pilgrims in Benares or at the Magh Mela in Allahabad. In very many of these cases both complainants and witnesses are pilgrims, bound on pilgrimages to distinct places, and obliged by the tenets of their faith to visit certain spots on certain auspicious days. It would hardly be fair to detain these men for a month, or may be two, to throw all their arrangements out of gear, and cause them endless trouble, expense and annoyance, simply for the sake of obtaining a more severe sentence on an habitual offender than the Magisterial Courts are empowered to award. Again, only the other day, I came across a case in which an habitual offender, against whom four previous convictions were proved, was convicted of an aggravated case of house-breaking with theft. The complainant was partner in a large firm, and had to attend at a distant place within a few days to take up a contract worth eighty lakhs. The culprit in this case certainly deserved the utmost penalty of the law. At the same time his commitment would have entailed on the complainant the risk of losing his contract. Such cases might be multiplied *ad infinitum*. I give these few to show how necessary it is that the law on this point should be amended.

7. Turning next to the provisions of Section 110, Criminal Procedure Code, the difficulties which attend the working of this section are very clearly set forth in paragraph 4 of the Punjab Secretary's letter No. 577-S, dated 30th September 1889, forwarded with your letter under reply. As therein pointed out, the provisions of the law, as laid down in the section under criticism, are not only difficult to work, but are practically useless when carried into effect. In the first place security for good behaviour cannot, like security to keep the peace, be taken on conviction. Secondly, it is almost impossible to get respectable witnesses to come forward and give evidence against notorious bad characters, who will, they feel convinced, sooner or later take their revenge; and, thirdly, when security for good behaviour has been taken, there is nothing to prevent the offender from moving to another place, where he is not known, and there continuing with comparative impunity his career of crime. If the magistracy are to be placed in a position to deal adequately with these pests of society, the disabilities above pointed out must be removed, and this can only be done by legislation.

8. As regards the police, they have, as I have already pointed out, no legal status with reference to the surveillance of habitual offenders. Under departmental orders they maintain registers of released convicts and habitual criminals. These registers must, under existing rules, be kept secret, and the police are directed to maintain a *secret* surveillance over the persons whose names are entered therein. Now this register of habitual criminals has been described by the highest legal authority in the province (see Allahabad High Court, Babu Lal and Datti Lal *versus* Horsford) as a register "the matter recorded in which is not confined to facts which have been ascertained by fair and open investigation in a court of justice. It consists," the High Court say, "in a great measure of the results of *ex parte* investigations by the police. It is in great part the fruit of rumour and suspicion, and sometimes it may be of malice." At the same time the High Court lay down that such a register strictly reserved for the private use of the police may be of advantage, though, if made public, they can imagine no greater engine of injustice and oppression. Now the tendency of English law is always more to protect the innocent than to bring the guilty to justice. I would therefore

ask: If this register be such as the High Court describe, how is its maintenance defensible either as a private or public record? Moreover, how is the secrecy of this register to be maintained? The police returns for 1888 show the total force of all grades and descriptions in these provinces to be 32,715 men. Of these only 13,400 officers and men in the whole of the united provinces are employed on station duties. These are the men employed in the investigation and detection of crime, in the maintenance of these registers, and in the surveillance of the persons entered therein. They number 1 to every 3,233 of the population. How is it possible for this force, in addition to their investigating and detective duties, to maintain adequate surveillance over bad characters? The answer to this question is that it is not possible; and that in order to maintain any kind of surveillance the station police must and do call the chaukidars to their assistance. This done, what becomes of the secrecy of the register? It follows therefore that either these registers must be given up, and with them all hope of exercising any kind of surveillance over habitual criminals, or the legal status of the police with reference to this class of criminal must be defined. Here again legislation is called for.

9. The defects in the present law relating to the restraint and surveillance of habitual criminals have now been pointed out. It has been shown that to cure them legislation must be resorted to. There remains to set forth the lines on which such legislation should be based.

10. To this end the first point which has to be decided is the correct definition of the term "habitual offender." This must obviously be the starting point for any system of surveillance. It is necessary to know the class of men to be dealt with before rules can be framed to deal with them. If the term "habitual offender" is to be confined to persons concerning whom more than one conviction has been recorded, the question of surveillance is comparatively easy. But I hold that the class of persons who should be brought under surveillance consist not only of those who have already come within the grasp of the law, but also of that numerous class who, though known to be living by crime, have hitherto managed to elude the law.

11 Now we have already in existence four definitions of the term habitual offender or criminal. The first is under Section 75, Indian Penal Code, and Section 348, Criminal Procedure Code, where "an habitual offender is defined as a person who, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of these chapters with imprisonment for a term of three years or upwards."

Chapter XII relates to offences relating to coin and Government stamps, and Chapter XVII includes all the major offences against property, such as dakáiti, thaggi, theft by administering poisonous drugs, highway robbery, burglary, cattle theft, common theft, dishonest possession of stolen property and arson.

12. The second definition is that laid down by the Government of India in Home Department (Judicial) No. $\frac{27}{1804\text{-}14}$, dated 14th December 1886 (see Manual of Government Orders, North-Western Provinces, Department VI, page 126), for purposes of jail discipline. Paragraphs (1) and (2) only of this definition are applicable to the case under consideration.

They are as follows.—

"The words habitual criminal shall mean a prisoner so classed—

"(1) By Court or Magistrate that heard the case.

"(a) Because he has been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with three years' imprisonment or upwards, and has been previously punished on conviction for an offence under either of these chapters and similarly punishable; or (b) because from the circumstances of the case the Sessions Judge or Magistrate believed the prisoner to depend on crime as a means of livelihood, or to have attained such an eminence in crime as to warrant his being classed with habitual criminals.

(2) By the District Magistrate, or any Magistrate empowered by him on this behalf, the classification being made in accordance with the principles suggested for the guidance of the Courts in clauses (a) and (b), paragraph (1) of the definition."

13. The third definition is that contained in Section 2 of the draft Act now under review. This differs but slightly from the definition under the Criminal Procedure Code. It lays down that "the term habitual offender shall apply to any person convicted on two or more occasions of offences under Chapter XII or XVII of the Indian Penal Code, whether the second offence was committed subsequently to the first conviction or not, and also has been sentenced to enhanced punishment under Section 75 of the same Code."

14. The fourth and last definition I allude to is to be found in paragraph 3, page 177 of the present Police Manual. The rule does not, it is true, actually refer to habitual criminals

as such; but it orders that the following classes of convicts shall on release be sent to the Police Superintendent:—

(i) convicts on whose warrant of imprisonment the Judge or Magistrate has recorded that they should be made over to police surveillance at the expiration of sentence; and

(ii) convicts imprisoned for the following offences:—

Dakáiti, thaggi, belonging to a band of dakáits.

Thefts by administering poisonous drugs.

Highway robbery.

Burglary.

Coining or uttering counterfeit coin.

Cattle theft.

Common theft on second conviction.

Dishonest possession of stolen property, if it follows a conviction of any of the foregoing offences.

We may therefore presume that these are the classes of offenders which, from a police point of view, are looked upon as habituals.

15. The question is, in legislating for the surveillance of habitual criminals, which of these definitions should be adopted. The underlying principle of the first and third definitions is second conviction of certain offences. These definitions do not touch upon unconvicted persons, however notoriously they may depend on crime as a means of livelihood. The fourth or police definition goes a little further, and embraces first convictions of certain of the more heinous offences against property. But here also notorious though unconvicted criminals are not included, and cannot therefore be dealt with. The second definition as laid down by the Government of India is by far the widest. For legislation, such as is proposed, it is to my mind not only the best, but the only definition, which could be adopted. Inasmuch as it would enable Magistrates to deal not only with persons actually convicted of certain classes of crime, but also with that far larger class of criminals who, though notoriously preying on society, have hitherto been either clever or fortunate enough to have eluded the grasp of the law.

16. Adopting this definition, the second point for consideration is, how to adapt and alter the present law, so as to enable the guardians of law and order to deal with the classes of habitual offenders therein defined.

17. To remedy the defects complained of in the procedure laid down in Section 348, Criminal Procedure Code, and Section 75, Indian Penal Code, it is obviously necessary to provide a more simple and expeditious method of dealing with habitual criminals under trial for specific offences. This could be easily done by extending the provisions of Section 349, Criminal Procedure Code, to such cases. Magistrates would then be empowered to enter up a conviction and send the prisoner to the Judge for enhanced sentence, just in the same way and under the same conditions as second class Magistrates now convict offenders and send them to Sub-divisional or District Magistrates for enhanced punishment. No simpler or more efficacious remedy could, I think, be devised.

18. With reference to the difficulties in the working of Section 110, Criminal Procedure Code, the only way I can see of getting over them is by legalizing some such system of police surveillance as is laid down in Statute 34 and 35 Victoria, Cap. 112, section 8. This could be done by amending Chapter VIII of the Criminal Procedure Code so as to empower Magistrates and Sessions Judges, in the case of habitual offenders, to order, in addition to any other punishment, that the prisoner should on release be kept under police surveillance for a term of years.

A further amendment in the provisions of the same chapter might also be made enabling Magistrates to call upon habitual offenders to show cause why they should not be kept under police surveillance for a term of years. This amendment could easily be effected by a slight alteration in the concluding paragraph of Section 110, Criminal Procedure Code, which would then run as follows:—

"Such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered *to be kept under police surveillance for a period not exceeding seven years*, or to execute a bond with sureties for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix."

19. In addition to the amendments above proposed, power should be given to Local Governments to frame rules to provide for (1) the maintenance of registers for habitual offenders under police surveillance; (2) the limits within which such persons shall reside; (3) the condition on which passes may be granted to such persons to leave such limits; (4) the inspec-

tion of the residences of such persons ; and (5) generally for the purpose of carrying out an efficient system of police surveillance.

20. With reference to the rules under clause (5) *supra*, I am not in favour of the system of roll-call, which is to my mind rather applicable to colonies of criminal tribes than to habitual offenders scattered all over the country. I would in lieu thereof prefer a system of reporting such as has been prescribed by the Government of India for released convicts under the rules circulated with Home Department letter No. L.-13-22, dated 11th January 1887. There should of course be a penal clause prescribing punishments for infringement of rules and breaking bounds.

21. This brings me to the question of police registers of habitual offenders. The High Court, North-Western Provinces, have condemned the maintenance of *public* registers of such classes of offenders in no measured terms. But the main objection advanced by the High Court is that the matter recorded in the register of habitual criminals *as at present maintained* is not confined to facts ascertained by fair and open investigation in a court of justice. Now, if the existing law be amended as above proposed, the entries in the police register of habitual offenders under police surveillance would consist of two classes only :—

(1) those habituals who, coming under the terms of paragraph (1) of the Government of India's definition, were ordered by the court on conviction to be kept by the police under surveillance for a term of years after release ; and

(2) those habituals who might, after inquiry under the amended provisions of Chapter VIII, Criminal Procedure Code, be found by a Magistrate to belong to the class described in paragraph 2 of the definition.

In both these cases the matter recorded in the register would consist of facts ascertained by fair and open investigation in a court of justice. Would the High Court and the Government of India object to such a register being kept as a public register at the police station? If not,—and I see no reason why they should,—I would strongly advise that, so far as these classes are concerned, the register should be public. This would enable the Government to give the police a legal status with respect to these criminals. The responsibilities of landholders, etc, in respect to the surveillance of the persons therein entered could also be legally laid down and rigidly enforced, and the assistance of the rural, road, municipal, and town police in watching these criminals could be freely used. In fact an efficient surveillance could then, as it cannot now, be maintained.

22. There would of course remain a large number of suspected persons outside these two classes. With respect to these I quite agree with the High Court that they should not be entered in a public register. In the register that I am advocating I would enter only the names of such offenders as had been declared by a Court or Magistrate after open investigation to be habituals. As, however, to quote the High Court's words—" it is necessary for the efficiency of the police that they should possess information of the names of persons *who are likely to commit offences*, and inasmuch as changes must of necessity constantly take place in the members who constitute the police force, it is also necessary that the information above mentioned should be preserved," I would instruct officers in charge of stations to keep private note-books containing information regarding suspected persons residing within their jurisdictions. I would enforce strict secrecy with regard to these note-books, they being open to inspection only to the station officer, his superiors, and his successors in office. The great mistake hitherto has, I am convinced, been that no distinction has been drawn between the declared habitual offender, *i e*, the offender who has been declared by a competent court to be an habitual, and the suspected person. If the line is once drawn between these two classes, all difficulties will vanish.

23. The only other point to which any reference appears necessary is the question referred to in paragraph 12 of the draft Act. This is described in paragraph 11 of the Punjab Government letter as the subject of compensation to be assessed on localities in which certain kinds of mischief are committed, and the offenders cannot be traced. I do not think this provision is necessary for these Provinces,—certainly not in the form in which it has been drafted. The only crimes to which this compensation system could apply are (1) cattle-poisoning, (2) arson, and (3) rioting. Both (1) and (2) are included in Chapter XVII, Indian Penal Code, and if the Government of India definition of habituals is accepted, notorious cattle-poisoners or rick-burners could be dealt with under the police surveillance sections. As regards rioting, it is not proposed to include this crime at all under the system. Moreover it is proposed to make the compensation assessable only on whole villages or tracts of country. This procedure would, I think, operate very unfairly. Habitual cattle-poisoning in these Provinces is usually practised by particular castes for the sake of gain. Persistent rick-burning or rioting is generally the result of caste quarrels, or disputes between rival zemindars.

It is, as a rule, possible to arrive with some degree of accuracy at the cause of these crimes; though often not possible to detect the actual perpetrator. I hold that if the compensation system is to be worked at all, power must be given to the District Magistrate to assess the compensation not only on the village or tract, but on the caste, persons, or person within the village or tract. Many a riot caused by disputed possession of alluvial lands or jungle tracts would never have occurred if the zemindars, on whose behalf it was committed, knew that the District Magistrate could assess on them a swinging fine by way of compensation. Cattle-poisoning could be dealt with very efficiently if Magistrates had powers to notify that the constant recurrence of the crime in certain villages or tracts would entail the assessment of heavy compensation on the Chamars resident therein. But in neither case do I think it would be fair to tax *all* the inhabitants of the villages or tracts in which these crimes occurred. So far as these Provinces are concerned, Section 12 of the Act, if passed as drafted, would remain practically a dead letter.

From A. M. MARKHAM, Esq., Sessions Judge, Meerut, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{404}{VII}$, dated the 2nd August 1890.

I have the honour to acknowledge receipt of your No. $\frac{441}{VIII-185A-2}$ of 24th ultimo, forwarding certain papers relating to the surveillance of habitual offenders for an opinion upon the question of the necessity for the suggested legislation, and regarding the principle of the proposals made.

2. I feel certain of the necessity for the suggested legislation for the surveillance of habitual criminals, and I approve of the principle thereof. My experience is that the procedure provided by Chapter VIII of the Code of Criminal Procedure ordinarily fails to touch the habitual criminal; and that the reason of this failure is that given in paragraph 2 of the Government of India's No. $\frac{1}{421}$ of 31st May last.

3. In view of a recent (unreported) ruling of the High Court of these Provinces, fine and imprisonment in default thereof cannot be inflicted under Section 75, Indian Penal Code, in addition to twice the amount of imprisonment awardable for a first offence.

The consequence is that, for all the numerous offences under Chapter XVII, Indian Penal Code (that is to say, for the commonest offences of all), for which a maximum of three years' imprisonment is originally awardable, no more than six years' imprisonment can be awarded under Section 75, Indian Penal Code, no matter how numerous the previous convictions, except in those comparatively rare instances in which a Court can consider the criminal deserving of a sentence of transportation for life. That is to say, there is no punishment awardable under Section 75, Indian Penal Code, for those offences, between six years' imprisonment and transportation for life. The same High Court ruling would seem to contemplate a sentence under Section 75 of a term of transportation less than for life, but I should respectfully doubt whether a Full Bench would uphold that portion of the ruling (see 5 W. R., Circular L 2, No. 160, 1866).

4. I am of opinion that Section 75 would be more effective were the penalty for all offences punishable under that section to extend to ten years, or to double the amount of punishment otherwise awardable for the offence; all sentences of over ten years to be of transportation which might extend to life.

5. It may perhaps be permitted me to say further that in my opinion no punishment is so deterrent as whipping—a punishment seldom resorted to in the case of habituals. The reason no doubt is that whipping cannot be awarded along with over five years' imprisonment, which is too short a term for your really confirmed habitual thief or house-breaker. If the maximum term of imprisonment with which whipping can be ordered were extended to ten years, and courts would more frequently include whipping in sentences upon habituals when they can legally do so, the deterrent effect could not fail to be very great.

6. I do not consider that in these Provinces there is any necessity for the proposed special legislation against conspiracies to commit serious mischief to property.

From H. D'O. MOULE, Esq., Commissioner, Lucknow Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 4505, dated the 4th August 1890.

I have the honour to reply to your No. $\frac{441}{VIII-185A-2}$ of 24th June 1890.

2. The proposed legislation contains provisions—

(*a*) for the better control of habitual criminals;

(*b*) for the better prevention of special acts of mischief, such as cattle-poisoning and arson.

3. Whatever may be the case elsewhere, I do not think that special legislation in regard to head (*b*) is at present required in any part of the North-West Provinces in which I have served.

4. Under head (*a*) I think that the Punjab Government proposals for the surveillance of habitual offenders are good. The remarks in paragraph 4 of Mr. Secretary Tupper's letter are especially to the point.

5. Government is of course aware that registers of bad characters and time-expired convicts are already, and have been for years, maintained by our Superintendents of Police. A certain amount of surveillance over such characters is also exercised. This varies according to the zeal and efficiency of the Superintendent and his Inspectors. But I fear that on the whole the results obtained in most districts are not very valuable. The proposals contained in sections 3 to 9 of the draft Bill, if adopted, would extend and formalize the powers of the police in this direction, and would place this branch of their duties on a better and more regular footing.

6. I think also that it would be a great improvement on the present system that a Magistrate should have the option of ordering a bad character to be kept under surveillance, if he think fit, instead of committing him to jail in default of security.

From A. B. PATTERSON, Esq., Magistrate of Saharanpur, to the Secretary to Government, N.-W. Provinces and Oudh,—dated the 11th August 1890.

In reply to G. O. No. $\frac{441}{\text{VIII}-185\text{A}-2}$, dated the 25th June 1890, in the Police Department, addressed to me as Magistrate, Saharanpur, I have to express my regret that the letter has remained so long unanswered. It reached me in Jhansi, after I had taken charge as Commissioner, and I unfortunately overlooked it till now.

2. I am strongly in favour of the principle which underlies the proposed legislation on the subject of habitual offenders. There is no doubt that it is becoming more and more difficult for the magistracy and the police to cope with them. They move about the country as they wish, and establish themselves in towns far distant from the places where their characters are known. Most of them have been previously convicted, but the police have frequently no means of knowing this; even if they have, they have no legal means of keeping these bad characters under supervision. It is most difficult to induce respectable people to come forward to give evidence, so as to have security demanded for good behaviour. The respectable classes of this country are timid, and the badmashes often establish a reign of terror.

When I went to Saharanpur there was actually such a state of things in Hardwar. A gang of scoundrels had settled there from the Punjab, under a leader of desperate character who had been many times convicted. These ruffians preyed on the pilgrims visiting Hardwar as well as on the people of the place, and had established such influence that no respectable people would give evidence as to their character.

It required all the efforts of Colonel Cantor, District Superintendent of Police, backed up by a very steong Deputy Magistrate whom I placed in charge of the tahsil, to break up this gang. The leader and the worst of the gang are now in jail, and the rest have fled.

Had the provisions of the proposed law been in force, these men could never have established themselves in Hardwar.

3. Even in England, where the law is so jealous with regard to personal freedom, and views with such jealousy all police interference with persons not accused of crime, legislation authorizing surveillance of bad characters has been found necessary. In every country of Europe, I believe, even in countries like France and Italy living under democratic institutions, surveillance of a far more rigorous character is permitted by the law.

And it must be remembered that in European countries the Government in its struggle against crime (when no political element is involved) has the whole of the non-criminal population on its side, whereas in India very few have any idea of public duty, and most men shrink from incurring danger or trouble by assisting the police.

There is no doubt that the latter now require more assistance in dealing with habitual criminals.

The provisions with regard to security in the Criminal Procedure Act of 1882 have much diminished the hold of the magistracy and the police over bad characters. Many decisions in appeal have had the effect of making the police timid about sending up such cases, and Magistrates, especially Native Magistrates, unwilling to demand security, unless on evidence which will certainly satisfy an appellate court.

I think the proposed legislation will be effectual in supplementing the weakness of the present law with regard to demanding security, and that no exception can be taken to any of the proposals on the subject.

4. I do not, however, think that the provisions of Section 12 of the Bill are required in these Provinces. No legislation on the subject of compensation for special acts of mischief appears to me to be required.

Note on draft Bill regarding surveillance of habitual offenders by W. KAYE, ESQ., *Junior Member, Board of Revenue, N.-W. P., dated the 11th September 1890.*

There can, I think, be no question but that some form of police supervision over habitual offenders after expiry of their sentence is advisable. Formerly known bad characters were to a certain extent watched by the police, but owing to certain High Court decisions and for other reasons the practice has fallen into disuse, and practically now habitual offenders are not looked after any more than what the Bareilly jailor used to call "the unconvicted population." It would be a good thing if the known bad character who has not been convicted could also be made subject to police surveillance, but that cannot safely be done at present, and it would be at any rate one step in advance to provide legal means of watching the habitual. It will be no real hardship to place habitual offenders under the surveillance of even an unimproved police, and to force them to live within certain limits, etc., provided the rules are reasonably worked, and that the fact that even an habitual must be allowed facilities for earning his living, is not lost sight of. I see no objection to such surveillance being extended to persons at present serving their time, or who have lately served their time. Whether it will be found practicable with our present police force really to supervise habituals is a point regarding which I have great doubt, but that is no reason for not taking the power, and in so far as the draft Act takes that power, I have no objection to raise to it.

As to the proposal to substitute surveillance for security for good behaviour. The advisability of adopting this proposal depends to some extent on whether we are really able to provide superintendence worth having. Our experience in dealing with criminal tribes does not encourage the hope that we can do so. I have been struck lately when taking evidence as President of the Police Committee with the unanimity with which the proposal to substitute surveillance of bad characters for imprisonment was disapproved. The great objection to it is this. It is difficult enough now to get the evidence of respectable persons against bad characters. It will be far more difficult if the offender who cannot give security is not to be locked up as he is now, but left at large and free to revenge himself at once upon those who have given evidence against him. I am opposed for the above reasons to the proposal contained in Section 4 of the draft Act. I would, however, place persons twice sentenced to give security for good behaviour in the same category as habitual offenders and make them liable to surveillance. As to Section 6 of the draft Act, in which, by the way, Section 122 seems to be a misprint for Section 112, there may be cases in which it would be expedient to substitute security for surveillance, but I do not think they would often occur. The great object of surveillance is to prevent habitual criminals going off on plundering expeditions. A thief released from surveillance on security could carry on his profession at a distance from the district in which security had been given with the minimum of danger to his surety. The section as drafted makes the whole of the provisions of Chapter VIII apply, and would therefore apparently require an unnecessary inquiry into character. It also infers that in such cases it should be the rule to accept security. I would make it the exception and require reasons for substituting security for surveillance and not for refusing to do so.

Section 8.—I cannot see why violation of the rules should be made punishable with whipping. This seems to me a most unsuitable punishment for such an offence.

Sections 10 and 11.—Effectual surveillance is impracticable without enlisting the aid of landholders. In order to enforce responsibility, the person actually responsible will have to be very carefully defined, and provision should be made for his being informed for whom he is responsible. The term "village headman" now over a great part of the North-Western Provinces, especially in the eastern districts, means next to nothing, and probably the same may be said of a great part of Bengal.

As to the proposal to assess compensation on certain localities where arson or cattle-poisoning are common, I am of opinion that in the North-Western Provinces at any rate no action in this direction is required. Neither offence is very prevalent in these Provinces. Cattle-poisoning is invariably done by Chamars, and the people have their own remedy, for when mortality among cattle is excessive, they say that it is pleasing to the Deity that the animals should be buried. The Deity is appeased, the Chamar does not get the skin, and the epidemic generally stops. To make the whole population of a tract of country liable for a crime known to be committed by only one section of them seems to me unreasonable. If the liability were confined to the Chamars resident in the circle, there might be something to be said for the proposal.

As to rick-burning, I doubt very much if the inhabitants generally do know who the offenders are, and I am sure the only evidence they keep back is evidence as to their beliefs, which is naturally of no value in court. I have been told by natives that the introduction of lucifer matches is the real cause of any increase of arson that may have taken place. They say now anyone can set fire to a stack of grain without attracting attention as he must have done formerly when he had to carry fire.

From A. CADELL, Esq., Commissioner, Rohilkhand Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{9905}{\text{XVI—926}}$, dated the 17th September 1890.

In reply to your No. $\frac{441}{\text{VIII—185A-2}}$, dated 24th June 1890, I have the honour to state that I see no serious objections to the proposals of the Punjab Government.

2. I think that the respectable classes require increased protection against the criminal classes, and that the attainment of this end should be secured in every way possible, and even at the risk of harassing an occasional criminal who is really anxious to live an honest life.

3. There is of course the additional risk that the proposed surveillance may furnish fresh opportunities for police oppression, but it is hoped that improvement of the police will lessen this risk, and after all the danger is a less one than the danger which already exists of punishing the innocent instead of the guilty.

From W. BLENNERHASSETT, Esq., Judge of Agra, to the Secretary to Government, N.-W. Provinces and Oudh, —No. $\frac{456}{\text{VIII}}$, dated the 8th September 1890.

I have the honour, with reference to High Court General letters No. 1 of 1890 and No. 4211 of 1890, forwarding Government letters, to forward for consideration of Government some suggestions regarding recognition of re-convicted prisoners.

2. My excuse for doing so is that the matter appears to be still under discussion, and that I have seen it discussed for 25 years, at the close of which period it does not seem to be any nearer to solution than it was at the beginning.

3. I submit that the question naturally falls into two distinct parts :—

1st,—What is the true name and residence of the prisoner?

2nd,—Has any person of this name and residence been previously convicted?

4. The first part is to be ascertained only by an itinerant local police officer visiting the spot, and taking oral evidence of respectable witnesses who identify the accused.

The second part is to be ascertained by a sedentary official keeping systematic registers and indexes.

5. As far as I am aware, the second part is efficiently performed. The failure occurs in carrying out the first part. Probably the police officer contents himself with writing to ask another police officer whether a criminal name is entered in his register of convictions or not, without enquiring whether the criminal has given a true name or not. I hear that in this district there is a village inhabited by mullahs; the local police believe that 80 per cent. of the men have been convicted in other districts; it is believed that not 7 per cent. of convictions are entered in the books. I have not verified these figures, nor would it be easy to do so. The case at least shows where, in the opinion of practical police officers, the failure occurs. I believe many cases could be found of one police officer asking another to record the conviction of an offender residing in his circle, whereas in fact no such person has ever resided in the circle, the name and residence having been falsely stated by the prisoner. The Railway Police, perhaps, because they have free passes over the line, are believed to be far more successful than the district police in identifying prisoners.

The records of the Registration Department are conclusive and exhaustive simply because identity is proved in every case; the police records are imperfect and defective simply because proof of identity is neglected.

6. I am not aware of any orders requiring the police to prove identity, or to tie the prisoner down to one name and one residence. If the prisoner changes his name and residence in order to escape justice, it seems to me plain common sense that the police should prove his true name and residence at the trial.

Rewards should be granted for this purpose when necessary.

The omission to prescribe such rules seems to me a remarkable defect in police procedure.

7. I am of opinion that subject to reasonable limits of time, trouble, and expense, the police should ascertain, by local inquiry, the true name and residence of every person charged with offences that may be habitual, for a reasonable period, say five or ten years, before trial; a distinct finding on this point should be recorded in the police chalan, and the offender should

be classified as having a permanent name and residence, or a changing name and residence, or as a wanderer with no fixed residence.

8. The Magistrate should enter the same classification in his warrant of conviction. Any prisoner giving a false name and residence, or refusing to give any residence, might be more severely punished according to the ordinary legal presumptions, that information withheld would, if ascertained, be prejudicial to the person withholding it. After conviction, the Magistrate should, when necessary, order further inquiry so as to fully satisfy himself that the criminal has not changed his name in order to escape increased penalties under Section 75, Indian Penal Code.

9. If the jail administration were to provide one or more central jails for the reception of wanderers and persons of changing names and residences, there would be at least one body of permanent officials in these Provinces capable of recognising any doubtful prisoner when brought up for trial.

10. At such central jail might be kept the best descriptive rolls known to science, only for this class of prisoner. The French system of anthropometry is believed to be singularly effective, a few simple measurements of the unchanging bones in the body enabling the police to decide whether a given prisoner is one of some hundreds or thousands entered in a register or not.

11. These proposals may involve some extra expense for travelling.

There can be no doubt, however, that if thieves travel, an efficient police must travel too. Railways exist in nearly every district in the Province, and 3rd class fares are decidedly low.

12. I submit that the present system is a haphazard arrangement; there is no distinction drawn between the difficult and easy portions of the matter, and no attempt is made to concentrate effort on the real difficulties of the case. There is a want of method and comprehensive treatment throughout.

13. I have divided the criminals concerned into three classes:—

1st.—Those whose names and residences are well known.

2nd.—Those whose names and residences can be ascertained with moderate trouble and expense.

3rd.—Those whose names and residences cannot be ascertained.

I have proposed to leave the 1st class under existing rules, to lay further responsibilities on the police as to the 2nd class, and to make serious efforts to deal with the 3rd class in a comprehensive manner even at the risk of some extra expense.

I venture to hope that these proposals are more logical and methodical than the existing arrangement.

From the HON'BLE G. E. KNOX, Legal Remembrancer to Government, N.-W. Provinces and Oudh, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{571}{1071}$, dated the 22nd September 1890.

With reference to your No. $\frac{441}{\text{VIII—185A-2}}$, dated June 24th, I have the honour to reply that I am in favour of a surveillance and control being kept over habitual offenders after their release from custody. The sudden transfer of a prisoner from a life of daily surveillance and control to complete freedom is now acknowledged to be a mistake, and the mistake is aggravated in this country by the difficulty with which a prisoner on his release can secure employment and the means of obtaining a livelihood. It not unfrequently happens that the only resource a man has on release from jail is plunder in some form or another. It is the only way by which he can escape starvation. If, too, he belong to a class or tribe with whom to plunder is an instinct, there is still less hope of his reformation. Dating with the day on which he leaves jail the old instinct re-asserts itself with greater vehemence because of the abstinence enforced by the imprisonment.

The difficulty will, however, lie in the application of Section 7 of the draft Bill. Surveillance will by itself effect little good: it may facilitate the detection of crime and in a few instances operate as a means of preventing it, but it is of little use when a man is forming habits of self-reform. It will not furnish him with a means of earning his livelihood, and the suspicion by which he is surrounded will often reduce him to despair.

Thus, while I consider surveillance of a habitual criminal a step in the right direction, I despair of any real benefit, unless it can be separated from ordinary police supervision. I have given the matter much anxious thought, and occupied myself so far as I had leisure in considering how this surveillance is to be practised by anybody other than ordinary police. A special body of police would be prohibitive because of the cost, and I am compelled to leave the problem unanswered.

Sections 10 and 11 of the draft Bill which practically enact supervision by village headmen and watchmen are, in my opinion, good. Any means by which we can secure surveillance of a man from his comrades is better than surveillance by the police, and I have often considered more might be done by more carefully enforcing the provisions of Section 44 of the Criminal Procedure Code.

I doubt whether any real good would be obtained from enforcing provisions like those suggested in Section 12 of the draft. In my experience I have had little reason to suspect systematic concealment of the poisoning of cattle and of incendiarism from the people in general. The difficulty of securing a conviction in our Courts may produce apathy, and I remember zemindars adopting their own remedies when cattle-poisoning was rife in place of prosecuting the offenders. The assessment of compensation upon a whole village seems to me to be a relic of barbarism, and an abandoning of the proper position of a Magistrate. I doubt whether there is much sympathy with the offender in crimes of this kind. There may be villages of professional thieves and cattle-lifters where such sympathy exists, but even then the levying of money compensation seems to me a mistake, and to tend rather towards encouraging the very sympathy that Government wishes to destroy.

From F. E. ELLIOT, Esq., Sessions Judge of Allahabad, to the Secretary to Government, North-Western Provinces and Oudh,—No. 637, dated the 29th September 1890.

In reply to your letter No. $\frac{441}{\text{VIII—185A-2}}$, dated 24th June, forwarding, for an expression of opinion, a draft Bill for the surveillance of habitual offenders and other papers, I have the honour to state that my experience as Sessions Judge of Allahabad for the last six years has not brought the necessity for the proposed legislation very prominently before me.

2. The habitual criminals who come before the Sessions Court in this district are mostly isolated individuals. Dakáitis and organized gang robberies seldom, if ever, occur. I can recall only a single instance within the last three or four years. So far as I am aware, there has been no cattle-poisoning, and the few cases of mischief by fire have always been referred to private enmity.

3. There are no doubt bad characters in the town and here and there among the villages over whom it would be very desirable to exercise surveillance of the character contemplated by the Bill. The main objection to it, namely, that the additional power which it will place in the hands of the police will be liable to abuse, has been already anticipated, and need not therefore be insisted on. It can be removed "by improving the condition of and raising the standard of intelligence and honesty among the police."

4. There is only one point on which I have any special suggestion to offer. It will, I think, be necessary to take care that the less hardened and confirmed criminal is not deprived of the possibility of earning his livelihood honestly. There may be some risk of this undesired result in a too rigid and indiscriminate application of the provisions of the Bill. It is very difficult for a marked man to obtain his living by ordinary pursuits. The difficulty will greatly be increased if it becomes the duty of "*every village headman and every owner and occupier of land*" to keep an eye on him under penalties. The "owners and occupiers of land" might be excluded from responsibility except in special cases.

5. It must be a hard matter for a man who has been in jail for theft or house-breaking more than once to obtain employment in or near his own village, even if not under any special surveillance; and, unless he happens to have some land to cultivate, his best chance is to seek employment elsewhere. It will, therefore, be essential to see that no unnecessary obstacles are placed in his way.

From A. H. HARINGTON, Esq., Commissioner, Allahabad Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{6373}{216}$, dated the 18th October 1890.

I have the honour to submit the opinion called for in G. O., Police Department, No. $\frac{441}{\text{VIII—185A-2}}$, dated the 24th June 1890.

2. The question of (1) the necessity for the suggested legislation divides itself into the questions of (*a*) the necessity for the proposed surveillance of habitual criminals, and (*b*) the necessity for taking power to assess compensation on localities in which certain special kinds of mischief are committed, and the offenders cannot be traced.

3. As to (*a*), the proposed surveillance of habitual offenders, I fully concur in the cogent and conclusive observations in paragraph 4 of the Punjab Government's letter. It is very

generally felt and admitted that the development of railways and telegraphs has facilitated the commission of serious crimes against property to a greater degree than it has facilitated the detection of such crimes or the arrest of the offenders; and, on the other hand, that the arm of the law has been seriously weakened by the change made in 1882 as to the procedure for taking security from *badmashes.* The need for some remedy for this state of things is strongly felt and experience in England and elsewhere, I believe, in Europe points to surveillance as the proper remedy. I consider, then, that the necessity for this branch of the proposed legislation has been fully demonstrated.

4. As to (*b*), assessment of compensation, I do not think that in these provinces the absolute necessity for this provision has been established. But in the occasional outbreaks of cattle-poisoning, by Chamars for instance, there has been experience showing that it would be well to have this weapon in our armoury ready for use, since it might at any time be required, and, as remarked in paragraph 4 of the Home Department letter, the law on this point should be general and not confined to a particular province.

5. As to (2), *the principle* of the proposals, I think that in both cases the principle is perfectly sound. The reform of the habitual offender is extremely rare. In the majority of cases he continues to prey on society from the moment he leaves prison. In times of political unsettlement he is the chief local danger to be reckoned with. There need be no sort of squeamishness about strengthening society against him by a surveillance that is not permitted to amount to persecution.

6. In the case of the special offence, the soundness of the underlying principle is not so transparently clear, because there is an apparent punishing by fine of the innocent as well as the guilty. This difficulty disappears if the more sensible view is adopted of regarding the assessment of compensation not as a punishment but as a form of special taxation justified by the necessity of compensating the actual victim of special crime, of insuring the local community against loss from this cause, and at the same time of repressing the crime itself by stimulating the inhabitants to co-operate with the police and the Magistrate in detecting and preventing it.

From F. GILES, Esq., Senior Assistant Commissioner, Kumaun, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 475—XIII, dated the 23rd July 1890.

In reply to your No. 1701—VI-600B, dated 10th July 1890, I have the honour to say that the treatment of habitual offenders suggested in the enclosures of your letter appears very expedient. It will at once ensure adequate punishment of professional criminals and lighten purely formal labour in Courts of Sessions.

From H. C. IRWIN, Esq., Magistrate of Shahjahanpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{453}{I-110}$, dated the 23rd July 1890.

I have the honour to acknowledge your No. $\frac{1701}{VI-600B}$, dated 10th July 1890, and to state that the proposal of the High Court of Madras, referred for opinion, seems to me admirable. It would effect a great saving of the time of complainants, witnesses, and Sessions Judges, and a considerable saving of expense to Government and of inconvenience to complainants and witnesses. It would also tend to make convictions more certain, as it would eliminate the period between commitment to and trial by the Court of Session, during which witnesses are so often tampered with by the accused or his friends, with the result that they vary their statements before the Judge from those made before the Magistrate. Moreover, even the *bonâ fide* recollection of uneducated witnesses does to some extent become confused by lapse of even a few weeks, and anything which shortens this interval between the commission of an offence and the trial of the accused is *pro tanto* a gain to justice.

2. I confess I cannot see why the same principle should not be applied to other cases as well as those which are only considered worthy of the Sessions Court because the accused are habitual offenders, and perceive no necessity for allowing the accused any option as to whether he will be committed to the Sessions for trial or not. He would almost invariably, knowing that the Magistrate had found him guilty, elect for the commitment, as giving him a better chance of escape. The right to be tried by a Judge and assessors is not the inalienable birthright of natives of India, and so far as it now exists under Act X of 1882 might, I think, be advantageously curtailed.

From H. F. EVANS, Esq., Sessions Judge of Moradabad, to Secretary to Government, N.-W. Provinces and Oudh,—No. 153—VII, dated the 23rd July 1890.

In reply to your No. 1701—VI-600B, dated 10th July, I beg to state that in my opinion the amendment proposed in procedure with regard to offenders liable to enhanced punishment under Section 75, Penal Code, is highly desirable. The amendment is one which I ventured to suggest in 1881 when the Code of Criminal Procedure was under revision.

2. The obligation on the part of the Court of Sessions to hear the offenders, and the reservation to the Court of the power to make or direct further inquiry, seem to me necessary, but also sufficient to guard against any injustice which might arise from inadequate inquiry by the Magistrate.

From COLONEL G. E. ERSKINE, Commissioner, Kumaun Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 2035—XIII-341, dated the 24th July 1890.

With reference to No. 1701—VI-600B, dated the 10th instant, I have the honour to state that I concur in the suggestion of the High Court of Madras, except that I do not, as regards the North-Western Provinces and Oudh, see any reason to require the Magistrate to give the criminal the option of a Sessions trial. Here thieves and house-breakers have not, as a rule, any right to trial by jury. In the non-regulation provinces Deputy Commissioners and Senior Assistant Commissioners have special powers under Section 34, Code of Criminal Procedure. These powers should of course be retained.

From F. BAKER, Esq., Magistrate of Fatehpur, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 87—XIII-103, dated the 24th July 1890.

I have the honour to acknowledge the receipt of your No. 1701—VI-600B, dated 10th July 1890, with enclosure, and in reply to state that the suggestion seems to me to be a good one, and that I am in favour of its being carried out.

From R. E. HAMBLIN, Esq., Magistrate of Bareilly, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 628—XIII, dated the 24th July 1890.

I have the honour to submit the following reply to your No. 1701—VI-600B of the 10th July 1890.

2. I would strongly urge the adoption of the suggestion of the Madras High Court that a Magistrate of the 1st class should be empowered to record a finding in the case of the conviction of a habitual offender, and that the Sessions Judge should record the sentence. The adoption of this reform would be one step towards utilizing more fully the time now spent by committing Magistrates in preparing a record for the Sessions Court; at present the file of the Lower Court is nearly entirely used on behalf of the defendant to show contradictions in evidence between the statements recorded in the Lower Court and those taken before the Judge; it is rarely taken advantage of for the benefit of the prosecution. The defendant is always given the advantage of having the statements of the witnesses for the prosecution being recorded twice, frequently with considerable intervals of time between the two statements, and is thus given great opportunities for taking advantage of the discrepancies of story that inevitably occur with repeated statements. The reform proposed removes this danger in a great number of cases.

3. I have the honour to point out that if the suggestion of the Madras High Court be adopted in its entirety the reform will little by little disappear till the present practice will be again universally adopted; no defendant would refuse to exercise the proposed option of having his case tried *de novo* by the Judge. This is a choice in which the defendant has everything to gain and nothing to lose: he knows from the order in the case that the Magistrate has condemned him, and the Madras High Court proposes that in these circumstances

he should be asked whether he is willing to be bound by this adverse decision or prefers to take his chances over again in a fresh Court. Naturally every one gives the same reply, that he wishes for a re-hearing of the case. I have the honour to point out that the defendant has no claim to this re-hearing; that the fact of an original trial occurring before the Judge with the help of a jury or assessors can give the defendant in a case such as this no right to have his case heard with a jury or assessors; the only claim a defendant has is that he should be given a fair trial, and that if a conviction occurs the conviction should be according to the weight of evidence. To secure this the aid of a jury or assessors is not necessary.

4. This reform is only one step towards the greater reform of a proper utilization of the record of the committing Magistrate in all cases. At present this waste of time occurs that the first Court has to spend a large amount of time in preparing a record which, as is pointed out above, is only used on behalf of the defendant. I have the honour to suggest that in Section 288 of the Code of Criminal Procedure the word "may" shall be replaced by the word "shall," so that in all criminal cases the case before the Sessions Court shall start from the point which it had reached in the lower Court. I totally fail to see the right of an accused to have the evidence recorded twice over; the right is given him under our present system, but that is no reason why it should exist for ever. There is no reason why an innocent defendant should be prejudiced by this alteration, and there is every reason why the increased chances of escape given by this system to a guilty person should be done away with.

From M. S. HOWELL, Esq., Sessions Judge of Shahjahanpur, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 187—VIII, dated the 23rd July 1890.

In reply to your letter No. 1701—VI-600B, dated 10th instant, I have the honour to state that in my opinion the suggestion of the Madras High Court is an excellent one, except the proviso that the Magistrate, when reporting a case to the Court of Sessions for sentence, should always offer the accused the option of a committal to the Sessions.

2. This proviso renders the whole suggestion nugatory, because the accused will always prefer to take the chance of trial at the Sessions, since he may be acquitted, and, if convicted, will be no worse off than he was when convicted by the Magistrate.

From F. N. WRIGHT, Esq., Magistrate of Cawnpore, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 872, dated the 25th July 1890.

In reply to your No. 1701—VI-600 B of 10th instant, I have the honour to say that the suggestion contained in the extracts accompanying your letter is excellent and in accordance with the existing practice as regards cases referred by Subordinate Magistrates to District Magistrates for increased punishment. The proposed amendment will also relieve the Court of Sessions greatly. As the jury principle is not in force in these Provinces, there will be no necessity for committing any such cases for trial to Courts of Session.

From W. F. WELLS, Esq., Magistrate of Ghazipur, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 654—XIII-213, dated the 24th July 1890.

I have the honour to acknowledge No. 1701—VI-600B, dated 10th July 1890.

2. In my opinion some improvement in the direction suggested by the extract from the Government of India's No. 1-421, dated May 31st, 1890, is desirable.

3. But, if I may be permitted to make any observation on the question, I should say that the suggestion does not go nearly far enough. I would suggest that the powers conferred by Section 30 and Section 34 of the Criminal Procedure Code be extended to all District Magistrates, with this alteration, that when a District Magistrate passes a sentence of more than three years it should be subject to confirmation by the High Court and not by the Sessions Judge, unless the Sessions Judge be at least five years senior to the District Magistrate. The accused should always however be allowed an option of being tried by the Court of Sessions.

4. My reasons for the above suggestion are as follows:—

(1) It seems unreasonable that a District Officer, usually a Covenanted Civilian of from 12 to 30 years' service, should have no greater powers in the way of punishment than a Native Deputy Magistrate of two years' standing, and that his powers should vary according as he happens to serve in the North-Western Provinces or Oudh, the conditions of both provinces being now the same.

(2) The provision for confirmation of a Magistrate's sentence by the Sessions Judge would have been unobjectionable when Sessions Judges were, as a rule, men of

long standing and experience who had passed through the various grades of District Magistracy. But now that the Sessions Judgeships are often filled by junior men it is unnecessary and lowering to the prestige of a District Magistrate to have to send his decision for confirmation to a Judge of half his service, who has possibly not been called to the judicial line on account of any superior abilities.

5. I believe at present many Magistrates rarely take up criminal cases because they object to their decisions being reversed and criticised by officers who have been their own assistants, or who have been their contemporaries or even their juniors at school.

The *raison d'etre* of an Appellate Court is that decisions should be reviewed by officers of superior learning, ability, or experience, and where these qualifications do not exist there is little advantage in appeals.

6. I would therefore submit that if the law is modified only as proposed it will be of little use in many districts. If the decisions of the District Magistrate had to be confirmed by the High Court, or if it was provided that they should only be confirmable by or appealable to the Sessions Judge, if that officer be not less than five years senior to the District Magistrate, then District Magistrates would be much more ready than they are at present to take up original cases themselves when they have sufficient leisure to do so.

From D. F. ADDIS, Esq., Magistrate of Bulandshahr, to the Secretary to Government, North-Western Provinces and Oudh,—No. 534—XIII, dated the 24th July 1890.

In reply to your letter No. 1701—VI-600B, dated 10th July 1890, on the subject of the treatment of habitual offenders in India, I have the honour to state that the proposal of the Madras High Court seems to me to be a good one.

From F. L. PETRE, Esq., Officiating Magistrate of Aligarh, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 317—XIII, dated the 24th July 1890.

I have the honour to acknowledge your No. 1701—VI-600B, dated 10th July 1890, regarding the treatment of habitual criminals. I think that the suggestion of the Madras High Court is a good one, but I would go still further, and would give the power of passing an enhanced sentence to the Magistrate of the District by making Sections 30 and 34 of the Criminal Procedure Code applicable to all Magistrates of districts, and by allowing them also to pass sentences up to the limit prescribed in Section 30 on cases sent up for that purpose by subordinate Magistrates of the first class.

This would still leave the convict his appeal to the Sessions, and would, I think, provide sufficiently for the vast majority of cases which now have to be committed to the Sessions for enhanced punishment.

If the case is so serious as to require a heavier sentence, I think it would be better that it should go to the Sessions as heretofore.

From J. E. GILL, Esq., Magistrate of Saharanpur, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 615—XIII-808, dated the 24th July 1890.

With reference to Secretary to Government, North-Western Provinces and Oudh, No. 1701—VI-600B, dated 10th July 1890, I have the honour to report that the suggestion therein made is an admirable one.

From C. STEEL, Esq., Officiating District and Sessions Judge of Aligarh, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 566, dated the 23rd July 1890.

In reply to your letter No. 1701—VI—600B of 1890, I have the honour to state that the proposal to extend the provisions of Section 349, Criminal Procedure Code, to cases which become cognizable by the Court of Sessions merely because the offender has been previously convicted and seems to be a habitual criminal, appears to me to be an eminently practical one. The work of the Sessions Judge would be considerably diminished, and the tendency (I cannot say an altogether reprehensible one if not carried too far) in these cases to award punishments which are perhaps light would be checked.

2. I have no experience of Indian juries, but judging from the little I know of assessors I should not think the right of trial by jury is one which needs being safeguarded.

3. The statement that "a Magistrate of the 2nd or 3rd class can now *convict*, etc.," of the Madras letter seems to be an instance of careless drafting. The Subordinate Magistrate

merely records an opinion of "guilty," an opinion the District or Sub-divisional Magistrate is by no means bound to accept.

From F. S. BULLOCK, Esq., Magistrate of Bijnor, to the Secretary to Government, North-Western Provinces and Oudh,—No. 357—XIII-517, dated 23rd July 1890.

In reply to your No. 1701—VI-600B of 10th July, on the subject of the treatment of habitual offenders, I am of opinion that the powers mentioned in Section 30 of the Criminal Procedure Code, and defined in Section 34, might well be delegated to District Magistrates, North-Western Provinces, which would in the Courts of those Magistrates completely satisfy all requirements in dealing with habitual criminals. And in the case of Magistrates of the 1st class, I think the suggestion of the Government of India that they should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence, or better still, confirmation of an enhanced sentence, is a most desirable one.

The waste of time and money involved in a committal to the Court of Sessions of habitual criminals and the inconvenience to witnesses thereby occasioned has always seemed to me to be most unnecessary, and the amendment is, I think, much called for; but I would specially lay stress on the suggestion that District Magistrates might well be allowed the exercise of the higher powers under Section 30, Criminal Procedure Code, as likely to improve the criminal administration of districts, and it has always seemed to me inexplicable why these powers should be conferred on Magistrates in Oudh and the Punjab, and not in the North-Western Provinces.

From F. S. GROWSE, Esq., Magistrate of Farukhabad, to the Secretary to Government, North-Western Provinces and Oudh,—No. 493—XV, dated the 25th July 1890.

With reference to G. O. No. 1701—VI-600B of 10th July 1890, I have the honour to state that the amendment in procedure suggested by the Madras High Court is in my opinion highly desirable.

From R. S. AIKMAN, Esq., Sessions Judge of Farukhabad, to the Secretary to Government, North-Western Provinces and Oudh,—No. 590—VIII, dated the 25th July 1890.

With reference to your letter No. 1701—VI-600B, dated 10th instant, I have the honour to refer you to my letter No. 274—XV, dated 16th idem, in which I have already expressed my opinion in favour of the proposed change.

From J. L. DENNISTON, Esq., Magistrate of Hamirpur, to the Secretary to Government, North-Western Provinces and Oudh,—No. 330—XIII, dated the 24th July 1890.

In reply to your No. 1701—VI-600B, dated 10th and received on 23rd July 1890, I have the honour to say that in my opinion the proposal to extend to Sessions Courts the powers exercised by District Magistrates under Section 349 of the Criminal Procedure Code is one that should not be adopted. The general principle followed by legislatures is that an offender should receive his sentence from the Court which tries him. Now this principle is already departed from in cases falling under Section 349 as it stands. But Section 349 is part of the existing law, and there is no question of criticising the existing law. Moreover as a safety-valve against inadequate sentences amidst the necessarily imperfect distribution of district work and the variable nature of cases under the same section of the Penal Code Section 349 may be a necessary provision of law. At the same time it is not an ideal provision, nor one that should be extended without the gravest consideration to the case of previously convicted offenders liable to the crushing sentence of transportation for life or for long terms of imprisonment. If these men deserve these sentences they ought to be tried by a Court possessing the skill and employing the deliberate methods which are brought to bear upon other cases of other criminals eventually sentenced to similar terms of imprisonment.

2. If any extension of Section 349 to Sessions Courts is carried out, I think that (as suggested in paragraph 8 of the letter of the High Court of Madras) the Sessions Court should always hear the offender, and that this should be understood to mean the offender in person.

From COLONEL T. J. QUIN, Deputy Commissioner, Partabgarh, to the Secretary to Government, North-Western Provinces and Oudh,—No. 1525, dated the 25th July 1890.

With reference to your No. 1701—VI-600B, dated 10th July 1890, calling for my opinion on the subject of habitual offenders, I have the honour to state that the measure proposed is a very useful one where the surrounding circumstances would make its introduction desirable.

2. In Oudh, however, the Magistrate of the district has increased power under Sections 30 and 34, Criminal Procedure Code, and every case not calling for specially severe punishment would usually come before him. I myself examine, and pass orders upon, every case where there has been a previous conviction. Where the case is a very serious one I order it to be committed to the sessions. If it appears to be one which I can myself try, I do so. If a milder punishment seems sufficient, I order the Magistrate to whom I send it to dispose of it himself.

3. On the whole, therefore, I do not think that the proposed change is called for in this Province.

From R. SCOTT, Esq., Sessions Judge of Banda, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 360, dated the 24th July 1890.

In reply to your No. 1701—VI-600B, dated the 10th instant, I have the honour to state that I approve of the suggestion made by the Madras High Court. However, if the option of committal for trial before the sessions be offered to the accused in all cases without any modification, I think the majority of accused persons will take advantage of it. In any case the reduction in the number of sessions trials estimated by the Madras High Court is much too high for these Provinces.

I would suggest that the option of a committal for trial before the sessions be confined to districts in which such cases are tried by a jury, and if it be provided that no sentence exceeding five years' imprisonment shall be passed except when the accused is committed for trial, there will be less tendency to demand a committal.

From LIEUT.-COLONEL F. BARROW, Deputy Commissioner, Gonda, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1521, dated the 24th July 1890.

With reference to your No. 1701—VI-600B, dated the 10th instant, I have the honour to state that I consider the proposal therein contained an excellent one.

From E. GALBRAITH, Esq., Magistrate of Budaun, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 385-XIII, dated the 25th July 1890.

In reply to your No. 1701—VI-600B, dated the 10th instant, I beg to say that I consider the suggestion a most excellent one.

From H. F. D. PENNINGTON, Esq., Sessions Judge, Ghazipur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 336—VIII, dated the 26th July1 890.

I have the honour to acknowledge receipt of your letter No. 1701—VI-600B, dated the 10th instant, with its enclosure.

2. I am of opinion that the suggestion contained in paragraph 6 of the Government of India's letter is one which should be adopted; and I consider that the provision for further inquiry by the Sessions Court at its discretion, alluded to in paragraph 8 of the Madras High Court's letter, would be an adequate safeguard of the interests of the accused.

3. I do not consider that in cases triable *with assessors* that the accused should be offered by the Magistrate the option of committal as suggested in paragraph 9 of the Madras High Court's letter. The accused in almost all cases would exercise such option, his previous experience having taught him the advantages of what is virtually a second trial. He would also feel a satisfaction in putting Government to the expense, which is often considerable, of causing the attendance of witnesses before the Sessions Court.

From H. B. J. BATEMAN, Esq., Officiating Deputy Commissioner, Jalaun, to the Secretary to Government, N.-W. Provinces and Oudh.,—No. 886, dated the 26th July 1890.

In reply to your letter No. 1701—VI-600B, dated the 10th July 1890, I have the honour to report that it is a question which does not affect this district, where the Deputy Commissioner has the power to give sentences up to seven years' imprisonment.

2. Speaking generally, the proposed plan would seem a very good one in many ways. I fail to see that it would be open to any abuse if such powers were only given to specially selected Deputy Magistrates and not indiscriminately to all 1st class Magistrates.

3. My experience of the regulation provinces is limited, but the chief call for such a change would seem to be in those districts in which no Sessions Judge is stationed, *e.g.*, Budaun

Great delay in trying sessions cases often gives an opportunity to the relations of the criminal to get round the witnesses for the prosecution.

4. Perhaps such a change would be a useful relief in districts where the Sessions Judge has specially hard work. The evidence in most of such cases is simple in the extreme; and the valuable time of the Sessions Judge is probably chiefly taken up in hearing absurd evidence of an *alibi*.

5. Magistrates might be instructed only to resort to the proposed procedure in simple cases, and the maximum sentence in such cases might be seven years.

From H. FRASER, Esq., Registrar, High Court of Judicature, N.-W. Provinces, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 3493, dated Allahabad, the 26th July 1890.

I am directed to acknowledge receipt of G. O. No. 1701—VI-600B, dated the 10th instant, and in reply to say that in the Chief Justice's opinion the proposal to make provisions analogous to those of Section 349, Criminal Procedure Code, enabling first class Magistrates to refer cases of habitual criminals to Courts of Session for an enhanced punishment, is an excellent one for the following reasons:—

1. He considers that many a habitual criminal would be sent up to the sessions under such a power, whom the Magistrate would hesitate to commit for trial, either because he knew the Sessions Judge was heavily worked, or from fear of harassing the witnesses.

2. It would be most popular among assessors, who hate the work, and witnesses, who do not care to be troubled over what may be to them a petty matter.

3. It would largely relieve Sessions Judges, whose criminal work has of late years left them far too little time for civil work.

As the Sessions Judge would have full power to recall and examine witnesses or to take further evidence, and as an appeal would lie, he apprehends no injustice to the accused.

Mr. Justice Young agrees in thinking the plan an excellent one, but points out that if as suggested by the Madras High Court, the accused should have the option between the reference and a commitment, he would prefer the uncertainty of a completely fresh trial, and that in this case no relief to Sessions Judges would be effected.

Mr. Justice Mahmud has never been able to approve of the policy on which Section 349 of the Criminal Procedure Code is based. He thinks the tribunal which tries and convicts should be the same as that which passes the sentence, and that though the proposed rule may be laudable from the executive point of view as to the exigencies of official work, it is of very doubtful expediency from the judicial point of view, and he would not extend it.

Mr. Justice Brodhurst being unwell and ordered rest, the papers have not been submitted to him. Mr. Justice Straight and Mr. Justice Tyrrell are on leave to England.

From G. TWEEDY, Esq., Officiating Sessions Judge, Bareilly, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{250}{VII}$, dated the 25th July 1890.

In answer to your printed letter No. $\frac{1701}{VI-600B}$, dated 10th July 1890, I have the honour to report that in my opinion the proposal to empower 1st class Magistrates to record a conviction in the case of habitual offenders (whether under Section 75, Indian Penal Code, or not), and to refer the case to the Sessions Judge for adequate punishment, is an excellent one. It will save an immense amount of trouble and inconvenience to witnesses, will do away with the risk that always exists of witnesses being tampered with between the preliminary inquiry and the trial in the Sessions Court, and will lighten the work of the Judge. The proposal to give an accused the option of committal is a harmless one, and might be adopted, although I do not see the necessity for it.

From H. H. BUTTS, Esq., Deputy Commissioner, Sitapur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1334, dated the 26th July 1890.

In reply to your letter No. 1701—VI-600B, dated 10th July 1890, I have the honour to state as follows:—

1. That I doubt whether habitual criminals escape enhanced punishments in the way supposed in these Courts, for the reason that the District Magistrate in Oudh having enhanced powers under Section 34, Criminal Procedure Code, it is his practice to keep such cases on his own file, or the subordinate Magistrates to transfer them in case they receive them direct from the police. There is not in my opinion much failure of justice or composition of crime on this account.

2. At the same time I do not see why the law should not allow cases of a simple nature, where the magnitude of the sentence has only to be considered on account of the character of

the offender, to be referred under Section 349, Criminal Procedure Code, as proposed, though on the whole I think that for many reasons the Magistrate should usually try the person whom he is to condemn, and that for securing the desired object it would be better to make Section 34, Criminal Procedure Code, universally applicable.

From COLONEL F. CURRIE, Commissioner, Sitapur Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 3458, dated the 20th July 1890.

I have the honour to acknowledge the receipt of your letter No. 1701—VI-600B, dated 10th July 1890, regarding the treatment of habitual offenders in India.

2. In reply I beg to say that I think the suggestion of the Madras High Court is a most excellent one in every way. I have already in the marginally-noted correspondence expressed my opinion as to the timidity with which Magistrates deal with "habituals." In the past Section 75, Indian Penal Code, has been almost a dead letter.

To Secretary to Government, Judicial Department—
(1) Commissioner, Rae Bareli's No. 2390, dated 31st December 1887.
(2) Do. Do. No. 241, dated 11th February 1888.
(3) Do. Do. No. 624, dated 28th March 1889.
(4) Commissioner, Sitapur's No. 3111, dated 7th July 1890.

3. The suggestion is a good one, but before it can be adopted it must be satisfactorily established that the circumstances under which Sessions Judges are appointed are such that the proposed procedure is likely to work. This, I humbly submit, is not the case in the North-Western Provinces. The system followed for some years past of putting junior Civilians into Civil and Sessions Judgeships, men of little district experience, and junior by years to the District Magistrates, is, in my opinion, a serious blot on the administration, and if persisted in likely to result in disaster. I presume the object of an appellate or revisional Court is that the Magistrate's decisions should be reviewed by an officer of superior experience. This is hardly the case at present in, say, the districts of Benares, Azamgarh, and Cawnpore, where the Judges are ten years and more the juniors of the Magistrates and Collectors. I would seriously ask, can the Government expect that under such circumstances District Magistrates will try cases, and submit them for confirmation to men who were boys when they themselves were in charge of districts? men of far less experience as to the difficulties of district criminal administration, and as often as not out of sympathy with the District Magistrate. Human nature is human nature, and to ignore this fact in matters of administration by putting mere boys in as Sessions Judges over old grey-headed Magistrates is a fatal mistake. If this is not to be altered, the excellent suggestion of the Madras High Court had better be let alone for these Provinces. But if the present system is abandoned, as wrong in principle, and as having been tried and found wanting, then, in my opinion, the suggestion of the Madras High Court, which is worthy of adoption, would be practicable and feasible.

4. The good results of the Madras High Court's suggestion (granting you have *experienced* Sessions Judges whose decisions command the *respect* of their Magistrates) would be three-fold :—

I—the work of the Magistrates will come oftener under the eye of the Sessions Judge;
II—the provisions of section 75, Indian Penal Code, will be acted up to; and
III—the number of sessions cases will be much reduced.

The great advantage of this third point will be (*a*) saving of expense to Government, and (*b*) witnesses will not be harassed and put to the inconvenience of taking long journeys, and leaving their villages and their work *twice* instead of once only. This will make people object less to giving evidence than is the case under the present system.

5. Under any circumstances the opportunity should be taken of the revision of the Code of Criminal Procedure of extending the provisions of Sections 30 and 34, Criminal Procedure Code, to all District Magistrates of the North-Western Provinces. The North-Western Provinces and Oudh are now practically amalgamated and their conditions are similar. Why should the Magistrate's powers vary according to whether he serves on the one side or the other of the Ganges? The only objection to this that strikes me is, that the sentences passed by a Magistrate of 25 years' service might go before a Sessions Judge of 10 or 12 years service; but this is another argument in favour of the alteration of the present system of appointing Sessions Judges, a system which causes friction and discontent, and prevents the Government from fully utilizing the services of experienced District Magistrates.

From H. B. FINLAY, Esq., Magistrate of Agra to Secretary to Government, N.-W. Provinces and Oudh,—No. 1280, dated the 29th July 1890.

I have the honour to reply to your No. 1701—VI-600B of the 10th instant and its enclosure.

2. I have long been of opinion that a change of procedure and an increase of the powers of the *District Magistrate* in these Provinces in the direction suggested by the Madras High Court is very desirable. It seems to be an indefensible anomaly that the Deputy Commissioner in Oudh can impose a sentence of seven years' imprisonment, and the same officer when transferred to the North-Western Provinces cannot impose a sentence of more than two years' imprisonment. I would recommend that District Magistrates in these Provinces should be empowered to inflict sentences of seven years' imprisonment just as Deputy Commissioners do in the non-regulation provinces, *e.g.*, Jhánsi, Kumaun, and Oudh.

3. But it is, I assume, admitted that the District Magistrate in these Provinces has but little time for original criminal work. These enhanced powers will be of little use to him then except in the circumstances referred to by the Madras High Court, *viz.*, on a reference from one of his subordinates. The Madras High Court suggests that the reference should be to the Sessions Judge. I venture to think that in these Provinces the reference should be to the District Magistrate. In the first place in many districts, Agra for instance, the District Magistrate is senior to the Judge, and there is too much tendency now-a-days to exalt the Judge at the expense of the Magistrate. It would be extremely difficult to define the position and to prove exactly what all goes to constitute this tendency, but the fact remains the same. It would very materially strengthen the hands and authority of the District Magistrate if the criminals of his district found that he could pass a sentence of seven years' imprisonment on them. I do not think that the retention of the power of appeal to the Judge would make any difference. A Judge would hesitate to reverse on appeal a sentence in which two experienced Magistrates had concurred. Individual idiosyncrasies on the part of Judges need not be taken into account.

4. My proposal then is this, that the District Magistrate in these Provinces be empowered to impose a sentence of seven years' imprisonment just as the Deputy Commissioner in the Regulation provinces can do now. His subordinates might refer to him all cases, whether of previous convictions or otherwise, in which they consider they have not power to inflict a sufficiently heavy sentence. The District Magistrate might call for more evidence if he thought it advisable to do so, or acquit or convict in his discretion. The power of appeal would remain, as before, to the Judge. The results of this would be (*a*) a very considerable and judicious strengthening of the hands of the District Magistrate; (*b*) diminution by one-half of the sessions trials under the present system, for the half of them are what are called Section 75 cases, and the consequent release of the Judge for civil work for which very often now he has little or no time; (*c*) an immense saving of time and trouble to witnesses and parties, who would not be required to come back to give evidence at the sessions trials. These are substantial improvements on the present system and benefits to the public, but not one of them would accrue if the Subordinate Magistrates are to refer their cases to the Sessions Judge. And I cannot think of anything in these proposals that is unfair to the accused.

From J. C. MACDONALD, Esq., Superintendent, Tarai District, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 1316—XIII-1, dated the 30th July 1890.

I have the honour to acknowledge the receipt of G. O. No. 1701—VI-600B, dated the 10th instant, and enclosure, on the subject of the treatment of habitual offenders, and in reply to state that the suggestion therein made, to the effect that the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Court for an adequate sentence, is, in my opinion, a good one, a double trial being thus obviated.

From H. W. GIBSON, Esq., Deputy Commissioner, Baraich, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 1309, dated the 29th July 1890.

In reply to your No. 1701—VI-600B, dated 10th instant, I have the honour to observe that Magistrates of the 2nd and 3rd class should not be allowed to try habitual offenders. Secondly, an amendment of the Criminal Procedure Code allowing the Court of Session to pass sentences on habitual offenders on a reference by a Magistrate of the 1st class as proposed would not be of much practical value if the accused at the conclusion of the trial is to be offered the option of trial before the sessions. The accused would almost invariably avail himself of the privilege. Were this difficulty removed and the Court of Sessions could on the Magistrate's record pass sentence, habitual criminals might be more sternly dealt with and the Sessions Courts would be relieved of much work. At the same time it must be remembered that the record, at best, does not exhibit complete evidence of the accused's guilt, though it may be supposed to do so, and it is therefore not altogether satisfactory to have to convict on another man's record. The way evidence is given and the demeanour of witnesses are becoming more and more valuable factors, and it is an appellate Court's want of knowledge on these

points which constitutes a weakness in the criminal administration. Courts of Session would be under a similar disadvantage under the proposed amended law, and it is not unlikely an acquittal would follow a reference for enhanced punishment, where, if the Court of Session had tried the case throughout, a conviction would have ensued.

2. We have in Oudh a periodical return showing how offenders with previous convictions have been dealt with by the various Courts. This enables the District Magistrate to exercise very useful supervision in this direction.

3. On the whole the Court of Session might naturally prefer trying the case itself. The Magistracy is largely composed of Native Deputy Magistrates, and among them are some whose intellectual and moral qualifications and whose social status do not inspire complete confidence. The proposed amendment in this consideration might impair the administration of criminal justice, and on this ground alone I am disinclined to support it.

From R. S. WHITEWAY, Esq., Magistrate of Meerut, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 1563—XIII, dated the 29th July 1890.

In reply to Government Order No. 1701—VI-600B of the 10th instant, I have the honour to state that I think the proposal referred to therein would be a great reform, as under the existing rule of practice it is often a great hardship on witnesses to return, from sometimes considerable distances, to give evidence a second time before the Sessions Court. This tells hardest in railway cases.

From J. WHITE, Esq., Magistrate of Benares, to the Secretary to the Government, North-Western Provinces and Oudh,—No. 6—XVII-29, dated the 29th July 1890.

In reply to your No. 1701—VI-600B, of the 10th idem, I have the honour to express my opinion that the practice advocated by the Madras High Court differs but little from the practice that has been followed in non-regulation provinces for many years, and which has been found to work very satisfactorily.

2. All that is required is (1) to amend the Criminal Procedure Code so as to extend the enabling power to the government of regulation provinces, and (2) to provide that not only Chief Magistrates but all first-class Magistrates of a certain standing shall be empowered to refer cases. Generally speaking it is impossible for Chief Magistrates of districts to take up much original criminal case work.

From J. MACPHERSON, Esq., Magistrate of Pilibhit, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{442}{\text{XIII-697}}$, dated the 29th July 1890.

With reference to your No. $\frac{1701}{\text{VI-600B}}$, dated 10th July 1890, requesting an expression of opinion as to the treatment of habitual offenders in India, I have the honour to state that I think the suggestion is an excellent one.

From A. B. PATTERSON, Esq., Officiating Commissioner, Jhansi Division, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{3317}{\text{XIII—150}}$, dated the 28th July 1890.

I have the honour to acknowledge the receipt of G. O. No. $\frac{1701}{\text{VI-600B}}$, dated the 10th July 1890, and enclosure, in the Judicial (Criminal) Department, on the subject of the treatment of habitual offenders in India, and to state in reply that I am strongly in favour of the amendment of the law as proposed in paragraph 8 of the Madras High Court's letter No. 2092, dated the 27th July 1885.

2. One great blot in the criminal administration is that Magistrates, especially Native Magistrates, will not recognise the infinite difference between first offenders and habitual offenders. They do not realize that very often a trifling offence, committed by a person previously convicted, should be more severely punished than a more serious offence committed by a person who has previously borne a good character.

3. Too often subordinate Courts abstain from committing habitual offenders for trial before the Court of Sessions because the offences charged are not of a very serious character. The present proposal will tend to prevent such failure in justice, and will also afford relief to complainants and witnesses, who often have to attend the Sessions Court in cases which are of importance only on account of the character of the criminals.

From E. ROSE, Esq., Magistrate of Mainpuri, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{465}{XVII-21}$, dated the 28th July 1890.

I have the honour to reply to your No. $\frac{1701}{VI-600B}$ of the 10th July 1890, forwarding an extract from letter No. $\frac{1}{421}$, dated 31st May 1890, from the Government of India, Home Department, accompanied by an extract from the letter of the Madras High Court therein referred to.

2. It is proposed that in place of the present provision of the criminal law as contained in Section 348 of the Procedure Code, by which habitual offenders are ordinarily to be committed to the Court of Sessions when they are a second time charged with the commission of certain offences, an amendment of the law may be made by which a conviction in such cases may be entered by the Magistrate and be sent to the Court of Session for the infliction of more severe punishment than the Magistrate is able to impose. The provision is similar to that by which under the existing law, as contained in Section 349 of the Criminal Procedure Code, Magistrates of the 2nd and 3rd classes may forward offenders, after conviction, to the District or Sub-divisional Magistrate.

3. The proposed amendment appears to me to be altogether free from objection. The Madras High Court points out in its 9th paragraph that where an offender has a right to trial by jury any objection to the presumed restriction of that right which the proposed alteration in the law might involve, would be obviated by giving the offender the option of committal to the Sessions in the ordinary course. Such an option would not, I presume, be given except where the offender had a right to jury trial. It is not, I think, in ordinary cases desirable that an offender should be permitted to choose the Court by which he should be tried. The exercise of the discretion would only be allowed when the Magistrate had determined to convict the offender, and the natural result would be that every offender to whom the option was permitted would as a matter of course choose to be committed to the Court of Session. The law would therefore become practically inoperative.

From J. NUGENT, Esq., Superintendent of Dehra Dun, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{492}{XIII}$, dated the 27th July 1890.

With reference to your No. $\frac{1701}{VI-600B}$, dated 10th July 1890, I have the honour to say that in my opinion the suggestion of the Madras High Court is a very good one.

2. I would not however give habitual offenders the option of being tried by a jury.

From COLONEL D. G. PITCHER, Deputy Commissioner, Hardoi, to the Secretary to Government, North-Western Provinces and Oudh,—No. 1621, dated the 1st August 1890.

In reply to Government Order No. $\frac{1}{421}$, dated 31st May 1890, I have the honour to submit the opinion called for.

2. The need for amending the law in the direction indicated appears to me too obvious to need demonstration. Now that Section 54 of the Evidence Act is to be amended, a previously convicted prisoner will stand his trial for the crime with which he is immediately charged on precisely the same footing as if he were a first offender. There appears no good reason, therefore, why his case should be tried out by any Court superior to that of a Magistrate, 1st or 2nd class, if apart from his previous convictions, it would be cognizable by those Courts. It would be, however, as well perhaps to limit jurisdiction in cases where previous convictions are known to exist to Magistrates of the 1st class.

3. For Oudh the procedure should, I submit, be to superior Magistrates of the 1st class to submit all cases of third conviction to the District Magistrate for sentence within his powers under Section 34, Criminal Procedure Code, and to insist on the District Magistrate himself trying under Section 34 every case when the prisoner or any one of the prisoners has three previous convictions against him. If the District Magistrate considers that a sentence exceeding seven years is required, he should either be empowered to submit the case to the Sessions Judge for a higher sentence, or preferably the Magistrates of districts might be invested with the powers of Sessions Judges, especially for cases under Section 75 of the Indian Penal Code. I throw out this last suggestion, as I think there are reasonable grounds for anticipating that if under the Oudh reorganization scheme the Sessions Judge happens to be junior at any station to the Deputy Commissioner, and finds himself unable to agree with the District Magistrate very often as to the necessity of severe punishments in such cases great friction detrimental to the peace of the district is likely to result.

4. There is no use in mincing matters when opinions are asked, and what I have just alluded to is a contingency not to be put out of sight. Travelling so much as I have during the last eight years in all districts of the Province as an independent observer, I have had some

opportunities and have frequently heard most bitter complaints from District Magistrates bearing all the burdens of responsibility for repressing crime as to the inadequate views held often by Sessions Judges on the necessity for exemplary sentences.

5. It may not be out of place to suggest that the repression of crime would be greatly aided and the necessity of expensive improvements in the police greatly lessened were Section 34, Code of Criminal Procedure extended to the District Magistrates of the North-Western Provinces and fully exercised by them. I submit that promptitude in punishment is a most powerful element in repressing crime, and I think it very unlikely that dakáiti could ever have assumed the proportions it attained in the Meerut and Rohilkhand Divisions had Magistrates there been exercising powers under Section 34, Criminal Procedure Code. I may illustrate the value of the section by a case which I have tried to-day. Only last night a desperate character was caught armed in the act of house-breaking. I have had a warrant out against him for several months under Section 110, Criminal Procedure Code, but amongst other crimes committed in the last ten years he has been twice tried for murder and has got off on legal technicalities and has only one actual conviction against him under Section 457. His character of disregard of life and his reputation of going armed has scared people from attempting to seize him under Section 34. Within 18 hours of his arrest I have been able under the Arms Act and under Section 75, Indian Penal Code, to secure the people peace from him, I trust, for the next ten years, with more impression on men of his stamp than a life sentence passed some two months hence at District Sitapur.

6. While on the subject of the treatment of habitual offenders I venture to call opinion to the necessity for amending Section III of the Whipping Act.

7. As that section now stands, a man might be convicted nine times in succession under Sections 379, 380, 381, 382, 388, 389, 411, 412 and 451 without having been once flogged, and may then chance to be convicted for the tenth time under Section 457. He would still be exempt from flogging in addition to imprisonment. Whereas any man convicted under Section 379 of a petty theft of mangoes who may happen to be convicted again under Section 379 of some equally petty theft becomes at once liable to flogging in addition to imprisonment.

8. Again, the man of ten convictions referred to above, if he is anxious to avoid the lash and yet to pursue crime, will be safe if he can manage so that his 11th, 12th and 13th convictions are under Sections 390, 393 and 412, Indian Penal Code, while if on the 14th occasion he takes care to cause hurt when committing a dakáiti he will escape from being flogged in addition to imprisonment: whereas if he only commits dakáiti without hurt as when he was convicted for the 11th time, he will be liable to be flogged in addition to imprisonment. It is therefore under Section IV of the Whipping Act actually to the interest of a man who fears flogging after having been once convicted of dakáiti without causing hurt to cause hurt on the next occasion. Surely this is all irrational.

9. The remedy seems to be (1) to substitute in Section III for the words "same offences" the words "of any one of those offences," and (2) to remove Nos. 8, 9, 10 and 11 from section IV and to add Section III(*a*) as follows:—

"Whoever, having been previously convicted of any one of the following offences, shall be again convicted of any one of the said offences, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code:—

1.—Robbery or dakáiti as defined in Sections 390 and 391 of the Indian Penal Code.

2.—Attempting to commit robbery as defined in Section 392 of the said Code.

3.—Voluntarily causing hurt in committing robbery as defined in Section 394 of the said Code.

4. Habitually receiving or dealing in stolen property as defined in Section 413 of the said Code.

5.—Lurking house-trespass or house-breaking as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

6.—Lurking house-trespass by night or house-breaking by night as defined in Sections 444 and 446 of the said Code, in order to the committing of an offence punishable with whipping under this section.

10. Again in connection with the subject of habitual offenders, why leave the Courts the option of awarding simple imprisonment in place of rigorous imprisonment in the case of persons proved to be habitual thieves, robbers, house-breakers, receivers of stolen property or in the habit of practising extortion, and who cannot give security for good conduct? I can state from experience that Native Magistrates frequently under Section 123 order simple imprisonment in such cases, but on what principle it is difficult to understand.

11. One more word as to deterrent punishment in the treatment of first offences under Section 32 of the Criminal Procedure Code. Magistrates of the 3rd class have no power to award solitary confinement. This seems a pity. If to their present power were added that of awarding rigorous imprisonment or solitary confinement up to 14 days, subject to the approval of or modification by the District Magistrate, I venture to think that the moral effect on first offenders would be greater than even two or three months of ordinary hard labour.

From H. BIRD, Esq., Deputy Commissioner, Jhansi, to the Secretary to Government, North-Western Provinces and Oudh,—No. 277, dated the 30th July 1890.

In reply to your letter Nos. $\frac{1701}{VI-600B}$, dated the 10th July, I have the honour to state that I have always been very strongly of opinion that in cases of previously convicted offenders a Magistrate should be empowered to enter a conviction and refer the case to the Sessions Judge for sentence. The cases are very often of a most simple kind, and my experience as Magistrate in charge of Cawnpore city was that the value of the property stolen seldom exceeded R10.

From COLONEL T. R. COWIE, Deputy Commissioner, Kheri, to the Secretary to Government, North-Western Provinces and Oudh,—No. 1785, dated the 30th July 1890.

I have the honour to reply to your No. $\frac{1701}{VI-600B}$, dated the 10th July 1890, on the subject of treatment of habitual offenders.

2. I am of opinion that the suggestion made by the Madras High Court in its letter No 2092 of 27th July 1885, to the address of Chief Secretary, Madras Government, is a good one, and its adoption would result in a saving of labour to Sessions Judges, expense to Government, and trouble and inconvenience to complainants and witnesses.

From R. MACLEOD, Esq., Officiating Sessions Judge of Benares, to the Secretary to Government, North-Western Provinces and Oudh,—No. 603, dated the 31st July 1890.

In reply to your No. $\frac{1701}{VI-600B}$, dated the 10th July 1890, I have the honour to state as follows.

1. It is quite clear, I think, that some legislation is required on the subject of habitual offenders. The civil work of this Judgeship, for instance, has been nearly brought to a deadlock for the last two or three years by the enormous number of commitments.

2. I do not think the lines to go on are those proposed in the letter of the Madras High Court.

It is extremely unsatisfactory passing sentence on proceedings held before another Court, and more especially when the sentence to be passed is a heavy one.

An accused person too, I think, may reasonably expect that sentence should be passed on him by the Court that has heard his case. The proviso suggested, that the Court of Sessions "shall be bound to hear the offender," does not make up for this, and if the accused person does not confess, but raises his whole defence again, it will mean that as likely as not the whole case would have to be heard *de novo*. Personally at least, judging from my limited experience in Section 349, $\frac{X}{82}$ cases, that is what I think would be the only way to satisfactorily dispose of the objections that would be raised. If the conviction of the lower Court is to be accepted, let it be accepted and sentence passed; but if it is only to be partly accepted there would be nothing to prevent the accused person engaging a pleader, and the case would then be argued probably like an appeal. This proviso would be a very unsatisfactory and illusory one in my opinion.

Similarly, the proviso that when reporting a case to the Court of Session for sentence the Magistrate shall *always offer* the accused the option of a committal for trial before the sessions. This would mean in this district that every case would be committed. At that stage every accused person would of course choose to be committed. He would have everything to gain by it and nothing to lose. The Magistrate might as well say to him in so many words—"I have convicted you and the case is going to the sessions, which will proceed to pass a heavy sentence on you. If you like you may have your case tried over again there. If it is tried over again you may have a chance of getting off. Will you have it tried over again?" What prisoner would say no? [illegible] not limit the [illegible]

3. W[illegible] of the proposed rule being passed [illegible] [illegible] apply only to habitual thieves, robbers, and burglars, [illegible] [illegible]e special powers of Magistrates and Sessions Judges under Sections [illegible] [illegible]tes should have power to pass [illegible] their ordinary pow[illegible]

Under Section 35 $\frac{X}{82}$ any Magistrate can already do this if a person is being tried on two or more *charges*, and I see no reason why they should not be entrusted with a similar power in the case of previous convictions.

See on this subject the remarks of the High Court in the case Queen-Empress *versus* Khalak (17th April 1889) in W. N., 1889, page 152.

(*b*) I would suggest that the powers specified in Section 30 and Section 34, $\frac{X}{82}$, should be conferred on all District Magistrates when previous convictions are proved.

These proposals would suffice to dispose of the great majority of cases.

The rest, *i. e.*, those in which seven years would not be a sufficient punishment, would be committed to the sessions in the ordinary way.

With reference to the right to claim to a trial by jury, an accused person has no such *right* at present, and I do not see why it should be granted. But supposing it were to be granted, it would be less objectionable if the proposals were acted on, I think, than in the way proposed by the Madras High Court. The accused person would at least see that it would not be an unmixed advantage to him to be committed for trial. He would understand that if the case were disposed of by the Magistrate the sentence would be limited to a certain length, and that if he were committed to the sessions he might get a much heavier sentence than he otherwise would.

From E. J. KITTS, Esq., Sessions Judge of Jaunpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 345, dated the 2nd August 1890.

I have the honour to acknowledge receipt of your letter No. $\frac{1701}{VI-600B}$, dated 10th July 1890, and to state that in my opinion the suggestion made by the Madras High Court on the subject of the treatment of habitual offenders would be an improvement upon the present procedure.

2. I believe, however, that a still better course would be to invest District Magistrates with powers under Section 34, Criminal Procedure Code. My reason for this belief is that the Court of Sessions has not the same close administrative control over the Courts of the Deputy Magistrates as the Magistrate of the district possesses, and the exercise of this control appears to me to be necessary to the efficient and consistent working of those Courts. Section 348, Criminal Procedure Code, makes no attempt to define the term "habitual offender," and the findings recorded by Deputy Magistrates on this point are, in my experience, capricious to the last degree. Sometimes a man is committed against whom there is only one previous conviction and that of old standing; *e.g.*, (1) Bhurki, convicted on 1st August 1879 and sentenced to 15 days' rigorous imprisonment, was committed to the Court of Sessions for simple theft, and was sentenced to one year's rigorous imprisonment and 30 stripes, a punishment which the Magistrate was himself competent to inflict. (2) Sahtu, Chamar, previously convicted of theft on 5th November 1878 and 13th April 1881, was committed on a charge of stealing grain valued at 8 annas. (3) Dwarka, Kahar, previously convicted on 3rd June 1875 and 21st February 1878, was committed on a charge of stealing property valued at R3. But much more frequently the Native Magistrates appear to me to err in the opposite direction. An accused who has been very recently convicted and has already received the full term or nearly the full term of two years; one against whom there are two or more previous convictions, the last conviction being recent; one against whom there are three previous convictions—in all such cases if the charge is more serious than petty theft, I think that the accused ought to be considered and treated as an habitual criminal: *e. g.*, (1) Khairulla convicted under Section 411, Indian Penal Code, on 14th April 1888 (2 months' rigorous imprisonment), and again under Section 380, Indian Penal Code, on 27th August 1888 (6 months' rigorous imprisonment), was convicted on two charges of theft (Section 379, Indian Penal Code) in 1889. (2) Bacha Ahir, convicted under Section 411, Indian Penal Code, on 30th June 1884 (6 months' rigorous imprisonment), again under Sections 457 and 411, Indian Penal Code, on 4th February 1887 (1 year's rigorous imprisonment), and again under Sections 457 and 511, Indian Penal Code, on 7th June 1888 (1 year's rigorous imprisonment), was convicted under Section 380, Indian Penal Code, in 1889. (3) Dulji Chamar, convicted under Section 457, Indian Penal Code, on 23rd December 1884 (1 year's rigorous imprisonment), again under the same section on 11th May 1887 (18 months and 30 stripes), was convicted under Section 457, Indian Penal Code, in 1889. (4) Parbhu convicted under Section 379, Indian Penal Code, 10th March 1874 (1 month's rigorous imprisonment), again under dated the 1st August Indian Penal Code, on 12th March 1879 (6 months' rigorous imXIII-297 of 7th instant, I have the hon Section 411, Indian Penal Code, on 10t has forwarded to me a copy of his letter to your address con-victed on two Bill circulated with VIII-185A-2 of 24th June.

convicted under Section 379, Indian Penal Code, on 2nd January 1888, and again under Section 411, Indian Penal Code, on 9th August 1889, was subsequently convicted under Section 457, Indian Penal Code. (6) Sheoratan, Chamar, twice convicted (Sections 379 and 411, Indian Penal Code) on 31st May 1882, and again twice convicted (Sections 411 and 457, Indian Penal Code) on 12th November 1884, was again twice convicted (under Sections 411 and 454, Indian Penal Code) in 1889. (7) Sukhu Bhar, convicted on 1st March 1875 (Section 109, Criminal Procedure Code), on 18th July 1876 under Section 392, Indian Penal Code (3 years' rigorous imprisonment), and again on 26th October 1887 under Section 411, Indian Penal Code (1 year's rigorous imprisonment), was convicted under Section 379, Indian Penal Code. (8) Doda Bhar, convicted under Section 457, Indian Penal Code (15 stripes) on 30th June 1887, and again under Section 457, Indian Penal Code (30 stripes), was convicted a third time under the same section in 1889. (9) Bhaghu, convicted under Section 379, Indian Penal Code, on 15th April 1887 (10 stripes), and twice under Section 380, Indian Penal Code, on 25th April 1887, was convicted under Section 454, Indian Penal Code, in 1889. (10) Matan, convicted under Section 380, Indian Penal Code (6 months' rigorous imprisonment), on 10th July 1885, and again under Section 379, Indian Penal Code (7 months' rigorous imprisonment), on 10th November 1887, was convicted under Section 380, Indian Penal Code, in 1889. These are cases taken from the 1889 calendar, and in no one of these cases was the accused committed under Section 348, Criminal Procedure Code, as an habitual offender.

3. I would therefore prefer that an attempt should be made to define or describe the "habitual offender," and that District Magistrates should receive powers under Section 34, Criminal Procedure Code. There is no doubt that Native Deputy Magistrates would submit their proceedings much more readily to the District Magistrates than to the Sessions Court, and in this way a better control over the conviction of habitual offenders would be obtained. Appeals from sentences thus pronounced would lie to the Sessions Judges instead of lying to the High Court, and this also would be a distinct advantage by saving the time of that Hon'ble Court.

4. Another reason why I should prefer the investment in this connection of the District Magistrate with powers under Section 34, Criminal Procedure Code, is that in this district (as in many others) nearly all the original criminal work is done by Native Magistrates, and I believe that a closer and more constant supervision by the Magistrate of the district is desirable and is much more necessary than in former days, when much of the same work was performed by European Joint Magistrates.

From M. L. FERRAR, Esq., Offg. Commissioner, Fyzabad Division, to the Secretary to the Government, N.-W. Provinces and Oudh,—No. 1588, dated the 4th August 1890.

I have the honour to reply to your No. 1701—VI-600B, dated 10th ultimo, as follows.

2. As Sessions Judge of three considerable districts, I very often have cases of petty theft before me merely because the accused person may have been convicted on two or more previous occasions.

3. Were such persons to be tried by Magistrates and referred for enhanced punishment to the Sessions Judge, Government would be saved from the expense of a sessions trial; assessors would be relieved of some of their unpaid-for duty; witnesses would be saved a second journey to the Courts; the Judge would be relieved of much petty but time-consuming work, and there would most certainly be fewer failures of justice than there are now. Between the date of committal by the Magistrate and the trial by the Judge witnesses may be bought over, or may forget the facts, or the complainant may withdraw, or wish to withdraw, from the case. Besides this there is the expense of keeping (*i. e.*, boarding and lodging) committed persons for long terms, two or three or four months, which in the many jails all over India and Burma must aggregate no small sum of money in the year.

4. The enclosure to your letter refers merely to Magistrates exercising their ordinary powers—I presume 1st class powers. But in this Province of Oudh, and I believe also in all the non-regulation provinces (India and Burma), District Magistrates can sentence habitual thieves to imprisonment for seven years subject to confirmation by the Sessions Judge. This is an approach to the rule now proposed, but it is only the District Magistrate who can dispose of cases in this way; whereas I understand that the new rule would apply to all 1st class Magistrates, and would not limit the Sessions Court to a seven years' sentence.

5. I approve of the proposed rule being passed as an amendment of Act X of 1882. It would apply only to habitual thieves, robbers, and burglars; and it would not interfere with the special powers of Magistrates and Sessions Judges under Sections 30 and 34 of the Code,

From H. V. LOVETT, Esq., Offg. Deputy Commissioner, Fyzabad, to the Secretary to the Government, N.-W. Provinces and Oudh,—No. 1843, dated the 4th August 1890.

In answer to your No. 1701—VI-600B, dated July 10th, 1890, I have the honour to state that I see nothing but benefit to be derived from adoption of the suggestion made in the extract which accompanies your circular letter.

From A. M. MARKHAM, Esq., Sessions Judge of Meerut, to the Secretary to the Government, N.-W. Provinces and Oudh,—No. 402, dated the 30th July 1890.

I have the honour to acknowledge your No. 1701—VI-600B of 10th instant, calling for my opinion on the suggestion contained in paragraph 6 of the Government of India's letter No. 1—421 of 31st May last, forwarded therewith.

2. I approve heartily of the suggestion. It will largely relieve Sessions Courts, while adding very little to the work of the Magistrates. But I may yet take leave to doubt if the Native Magistracy will largely avail themselves of the new procedure; or that they will be led by it to forego the satisfaction of themselves passing final orders. If they will not, as they certainly do not, avail themselves of the provisions of Sections 348 and 349, Criminal Procedure Code, already to their hands, I do not see how they can be expected to follow the new procedure, entailing greater trouble and more responsibility in cases of habituals that they would incur by acting under Section 348.

3. I agree with everything contained in paragraphs 7 and 8 of the letter of the Registrar of the High Court of Madras, No. 2092, dated 27th July 1885.

From V. A. SMITH, Esq., Magistrate of Muzaffarnagar, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 597, dated the 4th August 1890.

I have the honour to acknowledge your circular letter No. 1701—VI-600B, dated 10th July 1890, and to say that I agree with the suggestions made by the Madras High Court on all points. A provision should be added that the conviction after sentence passed by the Sessions Judge will be appealable to the High Court.

2. I have not observed any unwillingness on the part of Deputy Magistrates in this district to commit habitual offenders. I annex a return showing the total of cases and persons committed to the sessions during the past three years, and the number of cases and persons committed under Section 75, Indian Penal Code.

Cases committed to the Court of Sessions, Muzaffarnagar District.

Years.	Cases.	Persons.
1887	29	51
1888	32	43
1889	33	52
	Section 75 Cases.	
1887	12	14
1888	6	6
1889	9	9

From J. W. HOSE, Esq., Offg. Magistrate of Gorakhpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 462, dated the 4th August 1890.

I have the honour to inform you, with reference to your No. 1701—VI-600B, dated 10th July 1890, Department Judicial Criminal, that all the Assistant Magistrates in this district are in favour of the suggestion. For myself I approve of the opinions expressed in the letter of the High Court of Madras, except those in Section 9. A thief and house-breaker has no more right to be tried by a jury for his sixth offence than he has for his first, and I would not allow him to claim to be tried by a jury or even by assessors. All that the lower Court would do would be to record a conviction on the offence before it and to send up that conviction with a note of previous ones to the Sessions Court.

From G. ADAMS, Esq., Offg. Commissioner, Benares Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 7534—XIII-297, dated the 1st August 1890.

In continuation of my No. 6686—XIII-297 of 7th instant, I have the honour to state that the Magistrate of Ghazipur has forwarded to me a copy of his letter to your address, regarding the Draft Bill circulated with your No. 441—VIII-185A-2 of 24th June.

2. I would submit that I share in the views which he has expressed regarding the revision of the work of Magistrates of districts by Judges junior to them in standing and in experience of the country, and certainly not presumably superior to them in ability or in knowledge of the law. A glance at the Civil List will show how very often the condition of things to which Mr. Wells objects exists. In one division alone I find the Magistrate in one district senior to the Judge by 14 years' service, in another by nine years, in a third by eight years, in each case the Magistrate being a man of marked ability.

From J. S. CAMPBELL, Esq., Senior Assistant Commissioner, Garhwal, to the Secretary to Government, N.-W Provinces and Oudh,—No. 509—XIII-1, dated the August 1890.

In reply to your No. 1701—VI-600B, dated 10th July 1890, I have the honour to state that habitual offenders are sent to the Magistrate of the district, as I have special powers under Section 30 of the Criminal Procedure Code. The proposed amendment in procedure would save much unnecessary work and the trouble caused to witnesses in having to appear twice in Court in the same case.

From T. R. WYER, Esq., Magistrate of Basti, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 229—XIII-794, dated the 5th August 1890.

I think the proposed extension of the provisions of Section 349, Criminal Procedure Code, to cases of conviction of habitual criminals a most desirable improvement.

2. But I think that perhaps some safeguards might possibly be advisable, such as are proposed by the Madras High Court, so as to give an accused person the option of trial by the Sessions Court.

3. For it should be remembered that the once or twice convicted man, the "*daghe*" as he is called in these parts, is the man who is more often than any other the victim of false charges, as he is always pounced upon not only by the Police but by his fellow-villagers when any theft takes place, and is often, I daresay, convicted when he is really innocent owing to the previous convictions proved against him.

4. (Up to date the fact of a previous conviction is relevant evidence under the Evidence Act in the Court of a Magistrate, and though it is also relevant in the Sessions Court, it cannot be adduced under the provisions of the Criminal Procedure Code until after conviction, and only with a view to enhance the punishment; but the Act at present before the Legislative Council will make these previous convictions irrelevant in future.)

5. These cases take up very little time in the Sessions Court, though they swell the number of sessions trials; and I should not on this ground advocate the wholesale transfer of these cases for determination on the merits to the Magistrate. But in all cases when the accused pleads guilty it is merely a waste of time to send the case up to the sessions and to procure the attendance of witnesses and assessors for the trial, though the Sessions Court has, if the accused pleads guilty before that Court, nothing to do but to pass sentence on the plea of guilty.

6. On the whole I should be inclined to give any such accused the option of claiming trial before the Sessions Court, this option to be given by the Magistrate at the conclusion of the case before him if he makes up his mind to convict.

7. There is a cognate question to which the attention of the Legislature might, I think, be drawn.

8. Under many sections of the Penal Code a higher punishment than two years can be imposed in many cases scheduled as triable by Magistrates, *i.e.*, in cases other than those exclusively triable by the Court of Session.

9. For instance, the punishment under Section 325, Indian Penal Code, may extend to seven years' rigorous imprisonment, but cases committed for trial under this section as deserving a higher punishment than two years, the extent of a Magistrate's powers, are, I imagine, very rare. I do not remember ever having committed such a case for trial myself, and I do not remember of ever hearing of any such cases. Similarly, under Sections 379 and 411, Indian Penal Code, a maximum of three years' rigorous imprisonment can be imposed, but cases committed for trial with a view to the punishment being imposed to the full extent allowed by law are very, very rare. I once in my youth committed a case under Section 411, Indian Penal Code, for this purpose, but I was reprimanded by the judge, although he justified my action by imposing the full term of three years. I have never repeated my offence.

10. Practically it comes to this, that two years is the maximum punishment imposed for most of the offences scheduled as triable by magistrates, *i.e.*, offences not exclusively triable by courts of session, and it seems to me that this would be a good opportunity for making the provisions of the Penal Code more widely operative by extending the proposed extension of the provisions of Section 349 of the Criminal Procedure Code to all cases where a magistrate on

convicting an accused person considers that he deserves a higher punishment than that which he has power to inflict. In all such cases he should, I think, be empowered to enter a conviction and refer it to the sessions court for an adequate sentence and not merely in cases falling under Section 75, Indian Penal Code.

From W. Holmes, Esq., Magistrate of Moradabad, to the Secretary to the Government, N.-W. Provinces and Oudh,—No. 360, dated the 5th August 1890.

I have the honour to acknowledge receipt of your No. 1701—VI-600B, dated 16th July 1890, with which was forwarded an extract from a letter of the Madras High Court, on the subject of the treatment of habitual offenders in India.

I have for some time past held the opinion that the law might with advantage be amended in the way suggested by the Madras High Court, so as to enable Magistrates of the 1st class to take up and try cases against habitual criminals, and in the event of conviction to refer the case to the sessions judge for sentence. If such an amendment is passed, I have no doubt that the work of the sessions judges will be considerably lightened, and that a large number of persons, who at present have to attend as witnesses in two courts, will be saved much trouble and annoyance.

From L. G. Evans, Esq., Offg. Sessions Judge, Gorakhpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 317—VIII, dated the 5th August 1890.

In reply to your No. 1701—VI-600B, dated 10th July 1890, I have the honour to submit a tabular statement for three years showing the number of cases tried by the Sessions Judge of Gorakhpur under Section 75, Penal Code, and under other sections.

2. From this statement it would appear that if the Code of Criminal Procedure were amended as suggested the work of the sessions judge would be reduced by nearly one-fourth. This would be a material advantage, as the large number of sessions trials leaves only a few days in each month for the disposal of civil appeals, and the arrears in this judgeship have been accumulating since past years.

3. I would suggest that only the District Magistrate or Magistrates specially empowered should be allowed to refer cases in the way now proposed.

Statement showing the number of Sessions cases disposed of by Sessions Judge of Gorakhpur during 1887-88-89.

1	2		3		4		5	6		7
Year.	Cases under Section 75, Penal Code.		Cases under other sections.		Total.		Grand Total.	Percentage of cases under Section 75, Penal Code, to total number of cases.		Remarks.
	Gorakhpur.	Basti.	Gorakhpur.	Basti.	Gorakhpur.	Basti.		Gorakhpur.	Basti.	
1887	23	5	38	24	61	29	90	37·70	17·24	
1888	14	6	57	33	71	39	110	19·71	15·39	
1889	28	4	42	27	70	31	101	40·00	12·90	
Average for each year	21	5	45	28	66	33	100	31·34	15·15	

From P. Gray, Esq., Officiating Magistrate of Allahabad, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1370—XIII-71, dated the 5th August 1890.

I have the honour to offer the following remarks on your No. 1701—VI-600B of 10th July 1890 on the subject of habitual criminals.

2. There can be no doubt that many Deputy Magistrates, and in some instances European Magistrates, are in the habit of dealing themselves with cases of habitual offenders instead of committing them to the sessions, but it is no uncommon thing for Sessions Judges on conviction of such persons to inflict sentences of imprisonment only equal to (and in a few rare cases higher than) those which 1st class Magistrates are empowered by law to inflict. A District Magistrate is on grounds of policy averse to making frequent references to the High Court in cases where, in his opinion, inadequate sentences have been inflicted. So that there is something to be said in extenuation of the action of the subordinate Magistrates in dealing with such cases themselves. I do not think Deputy Magistrates lay much stress on the inconvenience caused to the witnesses for the prosecution in having to attend the Court of Sessions in the disposal of these cases, but are rather apprehensive lest committal should result in acquittals in the superior Court.

3. As to the suggestion made by the Madras High Court, contained in the extract submitted by you, I am of opinion that in this, the head-quarters district of these provinces, habitual offenders, if defended by one of the numerous members of the legal profession practising here, would, on the advice of their counsel, elect to be tried by a jury, so that the suggestion in its present shape would not be likely to afford relief to the Sessions Judge of Allahabad.

4. Committals for offences against property (Chapter XVII) in which Section 75 of the Code applies, do not, as a rule, take long to dispose of. But on the occasion of large assemblages of people at fairs like the Magh Mala in this district, to which the criminal classes of surrounding districts flock, it very often happens that the witnesses for the prosecution of habitual offenders are persons of another province or presidency, and in such cases it causes considerable inconvenience if the witnesses are bound over to attend the trials at the Court of Session and their attendance is secured with great difficulty. The consequence is that a 1st class Magistrate at times takes on himself the responsibility of disposing of the case, and the prisoner gets off with a somewhat inadequate sentence. If the accused is a person of another district, the delay in procuring the record of previous convictions against him intensifies still further the inconvenience and difficulty referred to above.

5. That the provisions of Section 75 of the Code are not satisfactorily worked is a matter within the experience of District Magistrates. A way out of the difficulty would be to confer on District Magistrates the power exercisable by Deputy Commissioners in non-regulation provinces, but this would, in a heavy criminal district, throw a great deal of extra work on the already overburdened District Officer, who would have as a compensation to be relieved of appeals from the decisions of 2nd class Magistrates.

6. My conclusions are that while the suggestion of the Madras High Court would afford relief to those sessions judges who receive committals from heavy criminal districts like Etah and Budaun in these provinces, it would have no appreciable effect in reducing the work of sessions courts where the jury system is in force; that in the disposal of cases against habitual offenders some sessions judges are as much to blame as subordinate Magistrates for the charge so frequently brought against the judicial service that habitual crime is inadequately punished; and that if the powers of transportation provided by Section 59 of the Code were more generally exercised by sessions judges cases against habitual offenders would be less frequent.

From E. B. Alexander, Esq., Magistrate of Etawah, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 930—XV-874, dated the 6th August 1890.

In reply to your letter No. 1701—VI-600B, dated 10th July 1890, I have the honour to state that in my opinion it would be more expedient to give the Magistrates themselves power to impose a sentence of imprisonment up to seven years in all cases in which two or more previous convictions were proved, or in which one previous conviction being proved the Magistrate found good reason to consider the prisoner to be a habitual offender.

2. As these sentences would, of course, be open to appeal, it appears to me that there is no great risk in conferring these enhanced powers.

From Colonel E. E. Grigg, Deputy Commissioner, Bara Banki, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1458, dated the 5th August 1890.

With reference to his No. 1701—VI-600B, dated 10th ultimo, has the honour to state that the suggestion made therein is approved.

From P. J. White, Esq., Deputy Commissioner, Sultanpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1970, dated the 7th August 1890.

With reference to your letter No. 1701—VI-600B, dated 10th ultimo, forwarding extract (paragraph 6) from the Government of India's (Home Department) letter No. 1—421, dated 31st May last, for expression of opinion, I have the honour to state that I concur in the suggestion contained in the extract of the letter quoted above, with this addition, that the Deputy Commissioners who are empowered under Section 34, Criminal Procedure Code, should also have power, like sessions judges, to pass a sentence up to seven years on a habitual offender who has been found guilty by a Magistrate after trial.

From H. F. Bartlett, Esq., Magistrate of Jaunpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 115, dated the 6th August 1890.

With reference to your No. 1701—VI-600B, dated 10th ultimo, I have the honour to state that as this is a small district as regards area, inconvenience to the same extent

is not felt by witnesses as in the large sessions divisions in Madras. There is no doubt on the part of the Native Magistrates especially a hesitancy in committing previously convicted criminals to the sessions, and not only have I had to call the attention of Magistrates to this matter, but I have been compelled to refer cases to the High Court under Section 438, Criminal Procedure Code.

2. With the restriction as to the accused's option in the matter proposed by the Madras High Court, I think the adoption of the same procedure as that given in Section 349, Criminal Procedure Code, would be decidedly beneficial in every respect.

3. I would note that last year, when I was only Magistrate for 1½ months, there were eight or ten cases of habitual offenders who ought certainly, judging from their present offence and their previous convictions and punishments, to have been committed to the sessions, but were really inadequately punished by the Magistrates themselves.

From W. T. Martin, Esq., District Judge of Mirzapur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 154, dated the 6th August 1890.

With reference to your printed letter No. 1701—VI-600B, dated the 10th ultimo, in the Judicial (Criminal) Department, giving cover to an extract from the Government of India's letter No. 1—421, dated 31st May 1890, and an extract from the letter of the Madras Government on the treatment of habitual offenders, I have the honour to state that in my opinion the amendment proposed is highly desirable. When an accused is committed merely because he is an habitual offender it falls hard on complainants and witnesses to have to attend a second trial of the case, for, as a rule, such cases are very petty. By providing that the Judge to whom the case is referred shall be bound to hear the offenders and may make or order any further inquiry he thinks fit, the amendment seems to me to be free from all objection, but I would suggest that no appeal be allowed from the order of the judge. His hearing of the case would be tantamount to hearing an appeal from the Magistrate's decision, and therefore a further appeal should be wholly unnecessary.

From W. Crooke, Esq., Magistrate of Mirzapur, to the Secretary to the Government, N.-W. Provinces and Oudh,—No. 628—XVI, dated Mirzapur, the 7th August 1890.

I have the honour to acknowledge receipt of your letter No. 1701—VI-600B of 10th July 1890, and to explain that I have delayed replying to this communication in order to allow of the collection of some statistics regarding the result of commitments under Section 75, Penal Code, to the Court of Session.

2. There can be no question that Magistrates do not avail themselves as freely of the provisions of this section as they should do. The reason is partly that they do not desire to inflict the hardship on complainants and witnesses which is involved in a second attendance before the Court of Session. This is a matter particularly deserving of attention in a district like Mirzapur, where the distances from head-quarters are great and the country inaccessible, particularly in the rainy season. There is another reason—the apparent unwillingness of the Sessions Court to award a punishment in excess of what the Magistrate is himself empowered to inflict, and in which the committal to the Sessions Court is plainly infructuous. The accompanying statement gives the previous history and results of committal in his district in 28 cases so sent up for trial to Sessions Court from 1st January 1888 to 23rd July 1890. You will observe that in 13 cases, Nos. 3, 5, 8, 11, 13, 14, 15, 16, 17, 20, 21, 23, 24, or nearly half the whole number, the punishment did not exceed the maximum of two years' imprisonment, and in some instances was much less than that amount. In other cases on the list the result was equally unsatisfactory, having regard to the previous history of the accused. I would refer you to Nos. 7, 10, 18, 25, 26, 27, 28 as instances. You will understand from these instances how little encouragement is given by the Sessions Court to prosecutions of this kind, and it is, I think, hardly to be wondered at that Magistrates prefer to deal with such cases themselves, however inadequate the sentence they are empowered to award may be, than to subject prosecutors and witnesses to the expense and inconvenience of a second appearance in Court.

3. I quite agree as to the advisability of the proposals made by the Government of India, but I may venture to point out that as long as the Sessions Judges fix their punishments at such a low scale as in the instances to which I have referred, the repression of habitual criminals will remain as impossible to be secured as it is under existing arrangements.

X

Statement showing the names of the accused persons who were convicted by the Sessions Judge of Mirzapur under Section 75, Indian Penal Code, from 1st January 1888 to 23rd July 1890.

Serial No.	Name of complainant.	Name of accused.	Under what section of the Penal Code.	Details of previous convictions.	Present conviction from Sessions Court.	Remarks.
1	Queen-Empress	Jokhu, Koeri	457/75	(1) Sentenced to 15 stripes under Section 380, Indian Penal Code. (2) Sentenced to six months' rigorous imprisonment under Section 354, Indian Penal Code. (3) Sentenced to three years' rigorous imprisonment under Section 454/75, Indian Penal Code.	Sentenced to five years' rigorous imprisonment on 20th May 1888.	
2	Ditto	Puranmashi, *alias* Badli	379/75	(1) Sentenced to three years' rigorous imprisonment under Section 411, Indian Penal Code, and 10 stripes. (2) Sentenced to two years' rigorous imprisonment under Section 379, Indian Penal Code. (3) Sentenced to three months' rigorous imprisonment under Section 454, Indian Penal Code.	Sentenced to four years' rigorous imprisonment on 22nd May 1888.	
3	Mussammat Madhui	Binda, *alias* Ganga Chamar.	392/75	Transportation for life on a charge of dakáiti. After remaining 21 years in the Andamans he returned to his native country.	Sentenced to two years' rigorous imprisonment.	
4	Queen-Empress	Shiusaran	454/75	(1) Sentenced to six months' rigorous imprisonment under Section 454, Indian Penal Code. (2) Sentenced to one year's rigorous imprisonment under Section 411. (3) Sentenced to two years' rigorous imprisonment under Section 380. (4) Sentenced to six months' rigorous imprisonment under Section 504. (5) Sentenced to one year's rigorous imprisonment under Section 406, including one month's solitary confinement. (6) Sentenced to three years' rigorous imprisonment under Sections 454/511. (7) Sentenced to one year's rigorous imprisonment under Section 123. (8) Sentenced to two years' rigorous imprisonment under Section 380, Indian Penal Code, including two months' solitary confinement. (9) Sentenced to two years' rigorous imprisonment under Section 456, Indian Penal Code.	Sentenced to ten years' rigorous imprisonment on 18th July 1888.	
5	Budhu	Shiudyal, Chamar	411/75	(1) Sentenced to two years' rigorous imprisonment on a charge of theft in 1866.	Sentenced to two years' rigorous imprisonment on 22nd September 1888.	

				(2) Sentenced to two years' rigorous imprisonment on a charge of theft in 1868. (3) Sentenced to two months' rigorous imprisonment under Section 379, Indian Penal Code, in 1872. (4) Sentenced to two months' rigorous imprisonment and fined R21, or in default to undergo two months' further rigorous imprisonment under Section 379, Indian Penal Code, in 1873.		
6	Urdari and Ramsaran .	Ramdihal, Koeri . .	411/75	Sentenced to one year and six months' rigorous imprisonment under Section 379, Indian Penal Code, on 31st August 1883.	Sentenced to three years' rigorous imprisonment on 3rd October 1888.	
7	Mannu, Lohár . .	Ganesh, Koeri . .	457/75	(1) Sentenced to six months' rigorous imprisonment under Section 457 in 1881. (2) Sentenced to two years' rigorous imprisonment under Section 380 in 1886. (3) Sentenced to three months' rigorous imprisonment under Section 379 in 1875. (4) Sentenced to one year's rigorous imprisonment on a charge of "badmashi" in 1876. (5) Sentenced to five years' rigorous imprisonment under Ssection 457, Indian Penal Code, in 1877.	Sentenced to four years' rigorous imprisonment on 20th October 1888.	
8	Shiu Tahal . . .	Sukh Lal, Pási . .	379/75	(1) Sentenced to seven years' rigorous imprisonment on a charge of dakáiti in 1866, and ordered to file a security to keep the peace for one year, or in default to undergo one year's rigorous imprisonment. (2) Sentenced to three years' rigorous imprisonment under Sections 511/457, Indian Penal Code, including four months' solitary confinement.	Sentenced to two years' rigorous imprisonment on 19th November 1888.	
9	Queen-Empress . .	Bacha, Chamár . .	380/75	(1) Sentenced to two weeks' rigorous imprisonment under Section 379, Indian Penal Code, in 1874. (2) Sentenced to three months' rigorous imprisonment under Section 457 in 1875. (3) Sentenced to two years' rigorous imprisonment and fifteen stripes under Section 457/75, Indian Penal Code, in 1881. (4) Sentenced to 1½ year's rigorous imprisonment under Section 457 in 1878.	Sentenced to four years' rigorous imprisonment on 22nd November 1888.	
10	Jokhu	Hanuman, *alias* Shamlal	379/75	(1) Sentenced to one year's rigorous imprisonment under Section 411, Indian Penal Code, in 1879. (2) Sentenced to six months' rigorous imprisonment under Section 379 in 1880. (3) Sentenced to two years' rigorous imprisonment under Section 380 in 1881.	Sentenced to five years' rigorous imprisonment on 22nd November 1888.	The accused states that he was convicted for fourteen times, but from the register of convictions it appears that he was convicted for four times only.

Statement showing the names of the accused persons who were convicted by the Sessions Judge of Mirzapur under Section 75, Indian Penal Code, from, 1st January 1888 to 23rd July 1890—continued.

Serial No.	Name of complainant.	Name of accused.	Under what section of the Penal Code.	Details of previous convictions.	Present conviction from Sessions Court.	Remarks.
				(4) Sentenced to four years' rigorous imprisonment under Section 379, Indian Penal Code, in 1884.		
11	Rajjab Ali	(1) Shubrati, and (2) Rahim Baksh.	392/75	(1) Shubrati sentenced to ten stripes under Section 457, Indian Penal Code, 1881. (2) Sentenced to one month's rigorous imprisonment and seven stripes after fifteen days under Section 379, Indian Penal Code. (3) Sentenced to six months' rigorous imprisonment under Section 457 in 1882. (4) Sentenced to two years' rigorous imprisonment under Section 380, Indian Penal Code. (5) Sentenced to three months' rigorous imprisonment.	Sentenced to 1½ years' rigorous imprisonment on 21st February 1889, and Rahim Buksh to six months' rigorous imprisonment.	
12	Queen-Empress	Udai, Pási	392/75	(1) Sentenced to five years' rigorous imprisonment under Section 394, Indian Penal Code. (2) Sentenced to seven years' rigorous imprisonment under Sections 475/511, Indian Penal Code.	Sentenced to ten years' rigorous imprisonment on 26th March 1889.	
13	Jokhu Dulie	1. Jet, Pási 2. Bhikha. 3. Madho. 4. Kalu.	411/75	No. 1.—Sentenced to two years' rigorous imprisonment under Section 379, Indian Penal Code, in 1881. No. 2.—Sentenced to six months' rigorous imprisonment under Section 479, Indian Penal Code.	Madho sentenced to one year's rigorous imprisonment, and Bhikha to two years, and the rest acquitted.	
14	Leshman, Brahman	Bisheswar, Chamár	379/75	(1) Sentenced to two years' rigorous imprisonment under Section 411, Indian Penal Code, including one month's solitary confinement. (2) Sentenced to two years' rigorous imprisonment under Section 411, Indian Penal Code, including one month's solitary confinement and twenty stripes after twenty days.	Sentenced to one year's rigorous imprisonment on 14th May 1889.	
15	Queen-Empress, through Ghurahu.	Peyag, Kewat	379/75	(1) Sentenced to six months' rigorous imprisonment on a charge of theft in 1857, and ordered to give security to keep the peace for six months, and to enter into a recognizance for R100, or in default to undergo six months' rigorous imprisonment in 1860. (2) Sentenced to two months' rigorous imprisonment on a charge of attempt at theft in 1866.	Sentenced to two years' rigorous imprisonment on 4th July 1889.	

				(3) Sentenced to four months' rigorous imprisonment on a charge of attempt to commit defamation in 1868, and ordered to enter into a recognizance for R30, or in default to undergo simple imprisonment until it is filed in 1870. (4) Sentenced to two years' rigorous imprisonment and to pay R10 fine, or in default to six months' further rigorous imprisonment and thirty stripes under Section 457 in 1874. (5) Sentenced to six years' rigorous imprisonment under Section 457 in 1878.		
16	Nathu, Barai . .	Lachman, Barai . .	379/75	(1) Sentenced to six months' rigorous imprisonment under Section 379 in 1887. (2) Sentenced to nine months' rigorous imprisonment under Section 379 in 1874. (3) Sentenced to two years' rigorous imprisonment and fined R25, or in default to six months' further rigorous imprisonment under Section 309, in 1880. (4) Sentenced to six years' rigorous imprisonment in 1882. (5) Sentenced to four months' rigorous imprisonment and 15 stripes after 15 days in 1874.	Sentenced to two years' rigorous imprisonment on 4th July 1889.	
17	Ilahi Baksh . . .	Ghuman, Chamar . .	379/75	(1) Sentenced to three months' rigorous imprisonment in 1869, and ordered to file security to keep the peace for one year, and to enter into a recognizance for R50, or in default to one year's rigorous imprisonment. (2) Sentenced to two years' rigorous imprisonment, including three months' solitary confinement. (3) Sentenced to one year's rigorous imprisonment in 1883. (4) Sentenced to 32 days' rigorous imprisonment under Section 224, Indian Penal Code, in 1878. (5) Sentenced to one year's rigorous imprisonment under Sections 511/379, Indian Penal Code, including one month's solitary confinement.	Sentenced to two years' rigorous imprisonment on 5th July 1889.	
18	Musammat Ramdei .	Parsottam, Kasarwani .	454/75	(1) Sentenced to 15 stripes under Section 379, Indian Penal Code, in 1878. (2) Sentenced to 20 stripes under Section 411 in 1880. (3) Sentenced to nine months' rigorous imprisonment under Section 406 in 1880. (4) Sentenced to two years' rigorous imprisonment under Section 411, Indian Penal Code, in 1884. (5) Sentenced to four years' rigorous imprisonment under Sections 454/75, Indian Penal Code.	Sentenced to four years' rigorous imprisonment.	

Statement showing the names of the accused persons who were convicted by the Sessions Judge of Mirzapur under Section 75, Indian Penal Code, from 1st January 1888 to 23rd July 1890—(concluded).

Serial No.	Name of complainant.	Name of accused.	Under what section of the Penal Code.	Details of previous convictions.	Present conviction from Sessions Court.	REMARKS.
19	Queen-Empress . .	Durga, Kahar . .	411/75	(1) Sentenced to three months' rigorous imprisonment on a charge of theft in 1866. (2) Sentenced to three months' rigorous imprisonment under Section 380, Indian Penal Code, in 1869. (3) Sentenced to four months' rigorous imprisonment under Section 380, Indian Penal Code, in 1871. (4) Sentenced to 25 stripes under Section 411, Indian Penal Code, in 1872. (5) Sentenced to 1½ years' rigorous imprisonment under Section 379, Indian Penal Code, in 1872. (6) Sentenced to five years' rigorous imprisonment under Section 380, Indian Penal Code, in 1875. (7) Sentenced to two years' rigorous imprisonment under Section 380 in 1886.	Sentenced to six years' rigorous imprisonment.	
20	Sukhlal . . .	(1) Darshan . . (2) Fakir . . .	457/75	Darshan sentenced to two years' rigorous imprisonment under Section 458 in 1879, and again sentenced to four years' rigorous imprisonment under Sections 451/75, Indian Penal Code, in 1884.	Fakir sentenced to two years' rigorous imprisonment under Section 458 on 22nd October 1889, and Darshan to six years' rigorous imprisonment under Sections 458/75, Indian Penal Code.	
21	Kalyan Das . . .	(1) Khaderu . . . (2) Ajudhya . . . (3) Jagmohan . .	411/75 and 411	Khaderu sentenced to 15 stripes under Section 411, Indian Penal Code, in 1885, and again to two years' rigorous imprisonment under Section 380, Indian Penal Code.	Jagmohan acquitted on 22nd November 1889; Khaderu sentenced to three years' rigorous imprisonment, and Sankar, Kasarwani, to two years' rigorous imprisonment, and the rest one year each.	
22	Queen-Empress . .	Karimullah . . .	408/75	(1) Sentenced to one year's rigorous imprisonment under Section 411 on 24th June 1889. (2) Sentenced to two years' rigorous imprisonment under Section 411 on 19th September 1889. (3) Sentenced to 15 stripes under Section 3, Act VI of 1864.	Sentenced to three years' rigorous imprisonment.	
23	Raghu, Koeri . .	Bishun and Gajadhar .	379/75	Bishun sentenced to one year's rigorous imprisonment on a charge of theft in 1866, and again sentenced to six years' rigorous imprisonment under Sections, 411/75, Indian Penal Code, in 1881.	Bishun sentenced to one year and Gajadhar to six months' rigorous imprisonment on 18th December 1889.	

24	Zalim, Koeri . . .	Jaimangal, Jaikaran Bhola and others.	411/75	Bhola sentenced to one month's rigorous imprisonment under Section 379 in 1876, and again sentenced to two years' rigorous imprisonment under Sections 457/75, Indian Penal Code, in 1887. Jaikaran sentenced to five stripes under Sections 457 in 1887. Jaipal sentenced to two years' rigorous imprisonment under Section 411, Indian Penal Code, in 1878, and again sentenced to two years' rigorous imprisonment under Section 457, Indian Penal Code, in 1881.	Bhola sentenced to one year's rigorous imprisonment on 25th February 1890. Mahipal sentenced to six months' rigorous imprisonment, and four accused acquitted.	
25	Ramsahai . . .	Shiucharan and Shiushankar.	41:/75	(1) Shiucharan ordered to enter into a recognizance for R50 for one year, or in default to undergo one year's simple imprisonment, in 1870. (2) Sentenced to six months' rigorous imprisonment under Section 411 and R50 fine in 1872. (3) Sentenced to five years' rigorous imprisonment under Section 392, Indian Penal Code. (4) Sentenced to four months' rigorous imprisonment and 20 stripes after 15 days under Sections 379 and 411.	Shiucharan sentenced to three years' rigorous imprisonment and Shiushankar acquitted.	
26	Gaya	Umrao, Musahar . .	454/75	Sentenced to six months' rigorous imprisonment under Section 380, Indian Penal Code, in 1886, and again sentenced to two years' rigorous imprisonment under Sections 382/75, Indian Penal Code.	Sentenced to three years' rigorous imprisonment on 22nd April 1890.	
27	Bhola	Gajadhar, Kahar . .	379/75	Sentenced to six stripes in 1881, and again 12 stripes in the same year, two years' rigorous imprisonment in 1881, 1½ years' rigorous imprisonment in 1886 and 15 stripes. Two years' rigorous imprisonment.	Sentenced to three years' rigorous imprisonment.	
28	Musammat Munia . .	Sheoburn Singh . .	379/75	(1) Sentenced to six years' rigorous imprisonment under Sections 414,/75, Indian Penal Code, in 1876. (2) Sentenced to three months' rigorous imprisonment under Section 4, Act III of 1867, in 1870. (3) Sentenced to one year's rigorous imprisonment under Section 379, Indian Penal Code, in 1870. (4) Sentenced to one month's rigorous imprisonment under Section 379 in 1872. (5) Sentenced to six months' rigorous imprisonment under Section 379 in 1872. (6) Sentenced to two years' rigorous imprisonment in 1873. (7) Sentenced to three months' rigorous imprisonment in 1865, on a charge of theft.	Sentenced to three years' rigorous imprisonment.	

From H. D'O. MOULE, Esq., Commissioner, Lucknow Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 4506, dated the 4th August 1890.

In reply to your No. 1701—VI-600B of 10th July 1890, I have the honour to report that I am, and have been for many years, entirely in favour of the suggestion contained in the extracts therewith enclosed.

2. At present days and days of the time of Sessions Courts are taken up with the formal trial of such charges as the theft of a pair of shoes or a few brass vessels. The accused in these cases are of course old offenders, and it is desirable that they should be put out of the way of doing further mischief for a considerable time. But there certainly ought to be a simpler and cheaper way of securing this result than by two trials, rendering necessary two appearances of all the unfortunate witnesses, firstly, before the Magistrate, and secondly before the Sessions Judge; and all to try a petty case that would be disposed of by a subordinate Magistrate were it the prisoner's first offence.

From J. J. McLEAN, Esq., Offg. Sessions Judge, Azamgarh, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 115—VIII, dated the 6th July 1890.

In reply to your No. 1701—VI-600B, dated the 10th ultimo, and enclosures, I have the honour to say that I fully concur in the proposal to enable Magistrates to deal with habitual offenders by referring them for adequate sentence to the Court of Sessions, in a manner analogous to that now provided in other cases by Section 349, Criminal Procedure Code.

In many of these cases the evidence is of the simplest character, and there is no reason why the whole trial should be held over again before the Judge and assessors. The saving of time will be considerable (though there is not at present an excess of work arising from this cause in this district). I presume that the Judge would of course be at liberty to pass any order he thought fit on such reference, *i.e.*, of acquittal as well as of confirmation, if the former seemed the proper course on the evidence.

The objections referred to in paragraph 9 of the letter of the Madras High Court do not apply, I presume, with the same force to these provinces, where the jury system is not universal, and in any case, having regard to the terms of Section 269, Criminal Procedure Code, it is not clear how accused can have any such right, except in so far as allowed him by order of Government for the time being.

From C. RUSTOMJEE, Esq., Officiating Magistrate of Ballia, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 734—XIII-110, dated the 9th August 1890.

I have the honour to submit the following reply in answer to G. O. No. 1701—VI-600B of the 10th ultimo, forwarding extract (paragraph 6) from letter No. 1—421, dated 31st May 1890, from the Government of India, Home Department, together with an extract from the letter of the Madras High Court therein referred to.

2. In my opinion the recommendation of the Madras High Court will be distinctly advantageous to the Sessions Judge, as it will relieve him of the tedium of taking down evidence *de novo* in the class of cases referred to. It will also save the parties and witnesses the trouble, inconvenience, and expense of attending the Sessions Court, where, as in this district, it is situated at a long distance from the head-quarters of the district, Ballia being 49 miles 1 furlong and 555 feet from Ghazipur by the pakka road.

3. If I may venture to make a suggestion, I would recommend that authority should be given to the Sessions Judge, if he so desire, of remitting the case for the evidence of any further witnesses he may consider necessary instead of being obliged to record the evidence of these further witnesses himself. This will save the parties the expense of bringing them all the way to the Sessions Court, and will moreover tend to check hasty and incomplete references. The terms of Section 349, Criminal Procedure Code, are in themselves not perfectly clear upon this point; whilst option is given to the District Magistrate or Sub-divisional Magistrate of taking any further evidence himself, no direction is laid down whether he may send the case back for such further evidence, though on the other hand the terms of the section by no means forbid such a procedure.

4. Whilst upon this subject I would beg to refer to the two following rulings of the Honourable Allahabad High Court:—

Queen-Empress *versus* Zor Singh, Weekly Notes, 1888, page 5
" " Khalak " " 1889, " 152

If the procedure recommended by Mr. Justice Brodhurst in the first ruling were adopted, and Magistrates of the 1st class were empowered to sentence up to four years for cases where a charge under Section 75 was framed, it would probably simplify the procedure more than the

plan recommended by the Madras High Court, as in that case an appeal would lie to the Sessions Judge in the same manner as in all other sentences passed by the Subordinate Magistrate instead of to the High Court upon sentences passed on reference. Any cases where a more severe punishment than four years was required might still be referred instead of being formally committed.

From H. B. PUNNETT, Esq., Officiating Sessions Judge, Saharanpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 168, dated the 7th August 1890.

With reference to your No. 170—VI-600B, dated 10th July 1890, and enclosures, I have the honour to state that in my opinion the change proposed is a most desirable one. In these provinces trial by jury is of rare occurrence, and the safeguard suggested, of allowing the accused to claim trial by jury when it is allowed by law, will prevent any miscarriage of justice. The strongest reason of all for the change proposed is the increasing work on the Judges' files, and where the work to be done can in any way be lessened without injury to the public it should certainly be so.

From E. B. ALEXANDER, Esq., Magistrate of Etawah, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 959—XV-874, dated the 12th August 1890.

In continuation of this office No. 930—XV-794, dated 6th August 1890, I have the honour to submit opinion of Mr. Muhamad Ishak Khan, Joint Magistrate, and of Rai Balmakund, Bahadur, Deputy Magistrate.

Note by MR. MUHAMAD ISHAK KHAN, *Joint Magistrate of Etawah, dated the 8th August 1890.*

The suggestion made by the Government of India is in my opinion a very good one; and I have no doubt it will greatly facilitate work, and considerably reduce the number of sessions trials, if the law is so amended as to enable Magistrates exercising first class powers to take cognizance of cases against habitual offenders, to interrupt convictions and refer them for sentence to the Sessions Court. Such cases are of common occurrence, and it entails a great hardship on witnesses to attend Court twice,—once when the case is heard in the Magistrate's Court, and the second time at its trial by the Sessions Judge; and it is clear that sometimes they have to attend Court at a great personal inconvenience.

In these provinces prisoners are not usually tried by a jury, and there can therefore be no objection to the proposed amendment on that ground. And it will be still better if a certain class of Magistrates, say all officers holding the rank of Joint Magistrate in the case of Civilians, and all Deputy Magistrates who have exercised first class powers for not less than ten years, are empowered to pass a sentence of five years' imprisonment on habitual criminals, and refer the cases for confirmation of sentence only to the Sessions Court as District Magistrates in the non-regulation provinces do. This procedure will obviate the necessity of sending up the accused person also to the Sessions Court.

Note by RAI BALMAKUND BAHADUR, *Deputy Magistrate of Etawah, dated the 30th July 1890.*

I have carefully read the suggestion of the High Court, Madras, and I am of opinion that if the same is adopted it would, I think, secure good results. I however think that the suggestion to give the option to the accused for committal for trial to the Court of Session does not seem to be a feasible one, as I am afraid that in that case the accused would generally prefer committal to the Court of Sessions for trial than be convicted by the Magistrate and the case be sent up to that Court for passing sentence: because when the Magistrate would offer the accused the option the latter would come to know that the Magistrate has already formed his opinion to convict him of the offence, so he would naturally wish to be tried by that Court with the hope that in that case the Sessions Court may form a different opinion when it tries the case itself. In such a case the number of trials to Sessions Courts would increase rather than decrease, and I think the hands of the Sessions Courts are already quite full in these provinces. At present the sessions trials in these provinces are held with the aid of assessors, and such cases are not tried by jury. I therefore beg to suggest that the proposed amendment on that head need not apply here.

The proposed measure is open to one other objection. It is this, that where the Sessions Court is at a district other than that where the accused is convicted, the latter will have the trouble to travel to the sessions head-quarters and extra guard of police will have to be provided. This difficulty might be met in this way, that when a conviction is made the Magistrate should send the record of the case to the Sessions Court and wait for his orders before sending the accused. In that case, if the quarterly sessions trials for that district are close at hand, the Sessions Judge might defer his decision until he comes to that district: otherwise he may order the accused to be sent up on a certain date to his head-quarters.

From R. D. SPEDDING, Esq., Commissioner, Rae Bareli Division, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1663, dated the 13th August 1890.

In reply to your printed letter No. $\frac{1701}{VI-600B}$, dated 10th July 1890, forwarding extract from letter No. 1—421, dated 31st May 1890, from the Government of India, Home Department, with enclosure therein referred to, regarding treatment of habitual offenders, and requesting an expression of my opinion on the suggestions made by the Madras High Court, I have the honour to report as follows.

2. In my opinion the amendment in the law with the view of empowering a Magistrate of the 1st class and the District Magistrate to take cognizance of cases in which the accused have been previously convicted, and to enter upon a conviction and refer the case, in which they consider the accused an habitual offender, to the Sessions Court for a sentence more severe than that they can pass under the powers invested in them by law, seems to me desirable.

3. Section 348 of the Criminal Procedure Code provides for the trial of habitual offenders, and it would no doubt save witnesses the trouble of attending the Sessions Court in cases of petty thefts and the like which are now committed to the Sessions Courts, and would also reduce the number of sessions trials if the Subordinate Magistrates were to be empowered to refer such cases for enhanced punishment to the Court of Sessions instead of committing them for trial to that Court. It should be left at the option of the Sessions Court to make or direct such further inquiry as it thinks fit to ensure the proper trial of the offenders.

4. A District Magistrate especially empowered under Section 30 of the Criminal Procedure Code can pass a sentence up to seven years or transportation or imprisonment subject to confirmation by the Sessions Judge, and under such circumstances, if District Magistrates will fully exercise their Section 34 powers, I think it would be necessary to refer only such cases to the Sessions Court in which the Magistrate before whom the accused is brought for trial considers him deserving of a more severe sentence than that which a District Magistrate can pass under Section 34 of the Code.

5. The proposal of offering to the accused the option of a committal for trial before the Court of Sessions, in my opinion, might be tried experimentally as a safeguard.

From H. F. HOUSE, Esq., Officiating Magistrate of Muttra, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 513—XV, dated the August 1890.

With reference to your letter No. $\frac{1701}{VI-600B}$, dated 10th July 1890, and enclosure, I have the honour to state that in my opinion the proposal to amend the procedure of Courts in respect of commitments to the Court of Session under Section 75, Indian Penal Code, appears to me to be a good one. I do not, however, see the use of a proviso such as that referred to in paragraph 9 of the letter of the Registrar of the Madras High Court. It would altogether paralyze the operation of the original proposal.

2. There is another way of dealing with such cases which may commend itself, *viz.*, to empower 1st class Magistrates to pass double the sentence which they are ordinarily empowered to pass, by charging a prisoner under Section 75, Indian Penal Code. Compare Section 35, Criminal Procedure Code.

3. I may point out that the High Court of these provinces have imagined that Magistrates have this power under the Code of Criminal Procedure as it now stands (Queen Empress *versus* Zor Singh; Weekly notes, 1888, page 5), and while correcting this view in a latter case, have expressed an opinion that Magistrates might well be invested with such powers.

4. Such a proviso as that suggested would relieve Sessions Courts considerably, as in the bulk of cases committed under Section 75, Indian Penal Code, the sentences do not exceed five years, which is practically the term of the sentences which Magistrates would then be empowered to pass.

From W. HOEY, Esq., Magistrate of Banda, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 353, dated 15th August 1890.

I have the honour to say, in reply to your No. 1701—VI-600B of the 10th ultimo, that the proposed amendment of the Criminal Procedure Code put forward by the Madras High Court seems to me both reasonable as regards procedure and advisable as obviating double labour of two trials which a commitment would necessitate.

From J. V. STUBT, Esq., Deputy Commissioner, Lalitpur, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 1326, dated the 16th August 1890.

In compliance with Government Circular Order No. 1701—VI-600B, dated 10th July last, asking for expression of opinion on the suggestion made by the Government of India for extending the provisions of Section 349, Criminal Procedure Code, for referring cases to the Sessions Judge concerning habitual offenders, I have the honour to state that in my opinion the suggestion seems a very desirable and practical one. It would not necessarily apply, I suppose, to Deputy Commissioners having special powers under Section 30, Criminal Procedure Code.

The difficulty mentioned in Section 9 of the Madras High Court's letter would not arise in these provinces, where the jury system is so limited. I should not think it would ever be necessary for a Magistrate to give an accused person the option of a sessions trial, inasmuch as on the analogy of Section 349 the Judge could always, if necessary, examine the parties and witnesses and take any further evidence, and he would, moreover, as the Madras High Court proposes, be bound first to hear the offender.

From W. BLENNERHASSETT, Esq., District Judge, Agra, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 435—VIII, dated the 18th August 1890.

In reply to your printed letter No. 1701—VI-600B, dated the 10th July 1890, I have the honour to forward my opinion.

2. There is no doubt that the Sessions Judge is much taken up with work resembling that done by an Assistant Magistrate. But in other departments there are numerous duties of an unimportant nature which equally waste his time without perhaps equal justification, *e.g.*, :—

(*a*) Original inquiries into ownership of unclaimed property, Regulation V, 1799.

(*b*) Original inquiries into genuineness of bonds under Registration Act.

(*c*) Keeping all his munsiff's accounts, and initialling some hundreds of items under 4 annas in value of unclaimed property.

(*d*) Certificates of succession.

(*e*) Minority cases.

(*f*) Most of the registration work is rather suited for a Treasury Officer, who is *ex officio* liable to constant interruption. A tribunal trying a murder case, it might be thought, should be free from interruptions.

(*g*) Most revenue appeals are exceedingly trivial in character.

All these matters combined frequently prevent a Judge from being able to hear appeals from munsiffs, his more legitimate work.

3. A habitual criminal who may get seven years' transportation is, I think, entitled to a careful trial, the more so as the police and the criminal's enemies appear to think it an easy matter to get a conviction against a discharged convict, whether guilty or not, and there is some tendency to take advantage of the stigma attaching to a previous conviction.

4. I think the Judges may fairly complain of having persons sent up to them who have never received more than six months' imprisonment.

This is one result of the weakness of the criminal administration. Some Magistrates of districts absolutely refuse to revise any case of a full power Magistrate on the ground of their having no leisure owing to press of revenue work.

I have heard of one instance in which a Magistrate acting as Judge for three months learnt more of the judicial and police work of the district in that time than during two years

of his incumbency as Magistrate. In point of fact criminal administration and supervision hardly seem to exist.

5. Some one of course must be responsible for the criminal administration, and if the Magistrates of districts cannot be sufficiently relieved of revenue work the Joint Magistrate or some one else should be entrusted with the duty.

Such person invested with powers under Section 30, Criminal Procedure Code, would have a strong grasp of the worst criminals of the district, and have a good opportunity of learning something of police procedure.

6. If this cannot be done, it would be well to reserve the power of reference to the Court of the Joint Magistrate, or some selected Magistrates. I think there are many Deputy Magistrates on whose record one would hesitate to pass a severe sentence. The Court of Sessions if dissatisfied with the record might be empowered to order a committal.

7. If the Court of Sessions is given power to pass a heavy sentence of transportation on a Magistrate's record, there seems no reason why it should not be empowered to enhance punishments in appeal not exceeding two years in all, also on a Magistrate's record, subject to appeal to the High Court. There is no doubt that persons insufficiently punished do appeal.

8. As section 349 is mentioned, I would note a defect in it to be avoided in any similar section adopted. There may be more accused than one: the Magistrate may think some of them deserve a light punishment, yet all should be submitted to the judgment of the superior Court.

From F. B. Mulock, Esq., Deputy Commissioner, Lucknow, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 4331, dated the 22nd August 1890.

In reply to your letter No. 1701—VI-600B, dated 10th ultimo, forwarding extract (paragraph 6) from letter No. 1—421, dated 31st May 1890, from the Government of India, Home Department, together with an extract from a letter of the Madras High Court, I have the honour to state that I strongly approve of the suggestion made by the Madras High Court.

2. I have always failed to understand why cases of the nature referred to should be committed to sessions.

3. If the suggestion of the Madras High Court be adopted, not only will Sessions Judges be relieved of much unnecessary work, but failures of justice caused by the tampering with witnessss between the committing and Sessions Courts, at present so frequent, will be prevented.

From J. H. Harrison, Esq., Officiating Magistrate of Etah, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 474—XV-81, dated the 22nd August 1890.

In reply to your No. 1701—VI-600 B, dated 10th ultimo, forwarding, for expression of my opinion, an extract from letter No. 1—421, dated 31st May 1890, from the Government of India, Home Department, I have the honour to state that in my opinion I don't think the proposed amendment will relieve Sessions Judges to the extent contemplated by the Madras High Court, as if accused persons are given the option, as proposed in paragraph 9, of having their case reported to the Court of Session for sentence or committed to that Court for trial, they will invariably choose the latter alternative.

Should it be found possible to omit this proviso, I have no doubt Sessions Judges' work would be very considerably lightened.

From E. T. Lloyd, Esq., Deputy Commissioner, Rae Bareli, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 2034, dated the 28th August 1890.

With reference to your letter No. 1701—VI-600B, dated 10th ultimo, I have the honour to state that I think the suggestion of the Madras High Court is an excellent one for the North-Western Provinces, though less useful for Oudh.

2. In Oudh the Deputy Commissioners are induced to take up most of these Section 75, Indian Penal Code, cases by admonitions from the Sessions Judges and Judicial Commissioner, unless the accused should receive more than seven years' imprisonment, which cases are rare.

3. I find that during the last quarter I disposed of six of them, and let none pass on to the Sessions Judge.

4. On the other hand, in the North-Western Provinces these cases, wherever more than 2½ years' imprisonment should be inflicted, have to be sent up to Sessions Judge for trial, and the unfortunate witnesses have to be re-summoned and re-heard.

5. I am convinced that this trouble, expense and annoyance induces many victims of thefts and burglaries to hush up their losses, especially when the actual loss has been small.

6. There is no trial by jury in this district, so that no comments on paragraph 9 are necessary.

From F. E. ELLIOT, Esq., Sessions Judge, Allahabad, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 638, dated the 29th September 1890.

In reply to your letter No. 1701—VI-600B, dated 10th July last, forwarding an extract from a letter from the Government of India, No. 1—421, dated 31st May last, and its enclosure, on the subject of the trial of habitual offenders, for an expression of opinion, I have the honour to state that in my judgment the suggestion made by the High Court at Madras is an excellent one, which might be adopted with great advantage and without any real prejudice to the accused.

2. There is a tendency among Deputy Magistrates to avoid where in any way it may be possible the chance of acquittal if a habitual criminal should be committed for trial, and at the same time to punish severely by piling up a grotesque combination of different penalties, such as fine, whipping, solitary confinement in addition to imprisonment, which they can themselves inflict.

3. The chance of acquittal is shown by the returns I have already submitted under cover of my letter No. 614, dated 22nd instant, reporting on the working of the jury system, to be not so great as appears to be supposed; but it is nevertheless a fact that habitual offenders sometimes succeed in making an impression on the minds of the jury by protesting that they have been seized without just cause simply because of their bad character and previous convictions, and juries have been, and, though not I think so much as formerly, still are, to some extent, disposed to regard the police with unreasoning prejudice, and to distrust confessions made before the committing officer even where there are no apparent grounds for distrust.

4. On the other hand, where cases in which such sentences as those indicated above have come before me in appeal, I have very seldom had occasion to set aside the convictions as being against the evidence.

5. The Magistrates may, therefore, I think, be safely trusted to decide justly as to the guilt or innocence of the accused, the sentence being left to the Sessions Court, before whom the accused would have a right to be heard, as in criminal appeals, and it is probable that the ends of justice will thus be secured with greater certainty than under the present procedure, while at the same time the Sessions Judge (and juries who constantly complain of the inconvenience and loss they suffer through their unpaid services) will be relieved of a considerable amount of work which may fairly be termed superfluous.

6. The following abstract shows the number of trials of habitual offenders by jury before the Sessions Court during the last 5½ years relatively to the number of other trials by jury and the total number of sessions trials of every kind :—

Year.	Total number of sessions trials.	Total number of trials by jury.	No. of trials by jury of habitual offenders, Section 75, Penal Code.	Remarks.
1885	50	24	21	
1886	89	54	29	
1887	77	36	20	
1888	82	43	25	
1889	81	37	30	
1890	38	24	16	
Total . .	417	218	141	

7. If however the option of committal for trial is to be given to the accused as proposed in paragraph 9 of the letter of the High Court at Madras, the suggested amendment of the present procedure will probably be a dead letter, for the accused is certain in every case to snatch at another chance of escape.

From A. SHAKESPEAR, Esq., Deputy Commissioner, Unao, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 2403, dated the 6th October 1890.

In reply to your No. 1701 of 1890, asking me for an expression of opinion on the subject of habitual offenders, I have the honour to write as follows.

I deprecate most earnestly any extension of the principle of Section 349, Criminal Procedure Code. I believe that section to be based on an unjust principle. It is contrary to that principle on which every accused person is entitled to be tried by that Court which will also sentence him according to his deserts.

It is contrary to the principle that a Court is responsible for the measure of punishment which it awards as well as to the conclusion it arrives at on the evidence of the guilt or innocence of the accused.

If the extension of the section is to be made for the benefit of the public, I would point out that the number of witnesses in sessions cases is so small as to be infinitesimal.

If the extension is to relieve the Sessions Court, I would point out that careful perusal of a heavy record is scarcely less laborious than trying the case. Further evidence is almost certain to be required, as scarcely two persons see a case in the same light.

Finally, if the suggestion made in the concluding sentence of paragraph 9 is carried out, *viz.*, that the accused should always be offered the option of a committal for trial to the sessions, the provision if enacted will be absolutely futile.

From J. DEAS, Esq., Sessions Judge, Cawnpore, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 182, dated the 6th October 1890.

In reply to your letter No. 1701—VI-600B, dated 10th July 1890, I have the honour to state that the amendment of the Criminal Procedure Code, as proposed by the Madras High Court, appears to me to be not only open to no objection, but almost a desirable one, as it will relieve on the one hand the Court of Sessions of the trial of petty cases of theft against habitual offenders, and on the other hand the witnesses in such cases of the hardship and inconvenience of the attendance in two separate courts.

From P. C. WHEELER, Esq., Officiating Magistrate of Azamgarh, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 493—XIII-107, dated the 8th November 1890.

With reference to your No. 1701—VI-600B, dated 10th July last, I have the honour to express my opinion as follows.

2. It is undoubtedly desirable that a magistrate should be empowered to convict and send the offender before the sessions for punishment when he cannot himself pass a sufficiently severe sentence.

3. Under the present system the same old offenders are perpetually being sentenced to two years' rigorous imprisonment by the lower courts. An examination of the pending and past sentences on old offenders now in the jail here supports this view.

4. I regret that this reply should be submitted after so long a time.

From J. W. MUIR, Esq., Sessions Judge, Mainpuri, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 606-VII, dated the 25th November 1890.

In reply to your printed letter No. 1701—VI-600B, dated 10th July 1890, addressed to all Sessions Judges, Magistrates and Deputy Commissioners, North-Western Provinces and Oudh, I have the honour to state that the proposed amendment would undoubtedly have one advantage, that of saving the time of the Sessions Judge. On the other hand, there are disadvantages which more than counterbalance this gain.

The sessions divisions are not so large here, and means of communication easy; in Madras the divisions are large and the communications also difficult otherwise. The inconvenience to complainants and witnesses cannot be considered here a sufficient reason for departing from the rules. Again, Section 349, Criminal Procedure Code, is itself an exception to the ordinary rule, that the magistrate who hears the evidence should decide on it and pass sentence, and should not be extended to serious cases.

It may be said that Sessions Judges every day have to decide criminal appeals without re-hearing the evidence, but in these cases they can only acquit or reduce the sentence: probably this was one of the considerations that led to the power of enhancement being withdrawn from all appellate courts except the High Courts.

Section 349 does not say whether the case shall be re-argued before the Magistrate. In practice these cases, I believe, are not.

The Madras High Court suggests that the Sessions Court should hear the offender. It would also seem necessary to hear the public prosecutor. In many cases the evidence would be meagre, and the Sessions Judge might have to call for the witnesses. This would cause an actual loss of time.

The case too differs in another respect from that of a Magistrate acting under Section 349. His record is read to him, and he passes orders without hearing arguments, a procedure he is accustomed to: the Sessions Court means the Sessions Judge sitting with assessors or a jury. It is difficult sometimes to get them to listen to and understand the proceedings in cases now when the witnesses are examined before them. It would be still more difficult if the proceedings consisted in the chief part of the record being first read out, and then notes and comments made by the prisoner, Government pleader and the presiding Judge.

It is true that many of the cases are very simple, and are easier to decide than many cases which come before assistant magistrates of one year's standing; but this argument if pressed to its logical conclusion would justify the Legislature in giving the enhanced power of sentence in such cases to the Magistrate who tried the case—which is not proposed. One peculiar difficulty arises in these cases. When a theft takes place the natural instinct both of people and police is to arrest any habitual offender they find handy. If evidence to prove his guilt cannot be found it is often manufactured.

I found at Benares that some juries would acquit, as they had general suspicions that the police got up all these cases: others would convict, as they held the popular view that a thief is responsible if any theft takes place in his village. The fact that they were called to try him was sufficient notice to the jury that the prisoner was an old offender.

It is very difficult in such cases to say whether the case is genuine or false, and would be almost impossible if the witnesses were not before the court.

As to the suggestion that the offences will be compounded if the complainant knows he will have to go to the Sessions Court, it may have force in Madras, but not here. A complainant here first considers if it is worth his while going to the thana or not, without considering when he may have to go elsewhere. As a rule he would have to go to the head quarters of his district, which would be also the seat of the Sessions Court.

These objections to the proposed amendment seem too serious to be weighed against the slight saving of the Judge's time, and less inconvenience to the complainant and witnesses.

The cases may in some districts be numerous, but they seldom take more than two or three hours to dispose of, while a riot, forgery, or dakáiti may take four or five days. If a man is to be transported for life he ought to have as good a trial as his country can give him.

I regret that I was unable during the vacation to reply to the letter, but after my return from Etawah on special sessions I suffered from fever, and have had no leisure since the courts re-opened.

PUNJAB.

From H. MAUDE, Esq., Officiating Junior Secretary to the Government of the Punjab and its Dependencies, to the Secretary to the Government of India, Home Department,—No. 151, dated Lahore, the 30th January 1891.

Your endorsement No. 427, dated May 31st, 1890, forwarded a copy of a letter addressed to other Governments on the subject of more stringent regulations for the control of habitual offenders, and asked for the opinion of the Lieutenant-Governor on the questions discussed in paragraphs 5 and 6 of that communication, namely, the expediency of passing sentences of transportation for life on persons habitually guilty of offences against property, and the procedure whereby such sentences can most appropriately be passed. These questions have now been considered by the Judges of the Chief Court and other officers whose views have been consulted and whose opinions are embodied in the enclosures to this letter.

2. Some officers, it will be observed, are in favour of adopting the suggestion made by the Hon'ble Judges of the Madras High Court, that 1st Class Magistrates should be authorized to record convictions and send the record to the Sessions Judge to pass sentence. An amendment of the law in this direction may appear desirable in the Regulation Provinces and the Presidencies of Madras and Bombay, where the District Magistrate can pass no heavier sentence of imprisonment than any other 1st class Magistrate, but in the case of the Non-Regulation Provinces the Lieutenant-Governor considers that the proposed amendment is not equally suitable. In the latter Provinces, under the provisions of Sections 30 and 34 of the Code of Criminal Procedure, the District Magistrate can be empowered to try as a

Magistrate all offences not punishable with death, and to pass any sentence of imprisonment for a term not exceeding seven years, and in the Punjab it is the almost invariable practice to confer such powers on the District Magistrate. This procedure gives the District Magistrate very considerable powers of dealing with classes of criminals who in the Regulation Provinces would either escape adequate punishment if tried by the Magistrates, or would have to be committed for trial to the Sessions Court. In the Punjab Sir James Lyall thinks that it is important that the Deputy Commissioner, as District Magistrate, should as far as possible himself control the criminal administration of his district, and the adoption of the recommendation made by the Judges of the Madras High Court would tend to weaken his authority in this respect, even if the proposal as it stands were not open to other objections. One serious objection is put forward in the Government Advocate's opinion, namely, that the accused would have considerable opportunities of prejudicing the prosecution and causing much additional trouble and loss of time before the case is finally disposed of. Moreover, as a general principle, it appears to His Honour to be wrong to require one Court to pass a sentence on a finding recorded by another, and when the sentence is one of transportation for life this objection is accentuated. The Lieutenant-Governor therefore desires to invite the attention of the Government of India to the proposals made by Sir Meredyth Plowden, which he thinks are far preferable, as calculated to strengthen the hands of the District Magistrate, while avoiding the uncertainty and delay of referring cases to the Sessions Judge before sentence can be passed. If these proposals are accepted, not only the District Magistrate, but also selected 1st class Magistrates, will have power to pass sentences of seven years' imprisonment in all cases in which it is desirable to make an example of a habitual offender, the number of such cases being widened so as to include offences which at present do not fall within the terms of Section 75 of the Indian Penal Code. Whether the Government of India will consent to extend to the Regulation Provinces the special provisions of the Code which at present obtain only in the Non-Regulation Provinces is a question on which the Lieutenant-Governor's opinion is not required, but all the suggestions made by Sir M. Plowden are, His Honour thinks, useful and such as in any case should be adopted in those parts of British India in which the special provisions of the law already are in force. The adoption of these recommendations will not affect the comparatively small number of cases in which it is desirable that the accused should be committed for trial to the Sessions Court, if a sentence of seven years' imprisonment is not considered adequate; but seven years' imprisonment is no light sentence for offences against property, especially when it is considered that for prior offences the convict may be supposed to have been sufficiently punished.

From E. P. HENDERSON, Esq., Government Advocate, Punjab, to the Junior Secretary to the Government of the Punjab,—No. 403_D.A., dated Lahore, the 17th July 1890.

In reply to your letter No. 628 of 3rd instant, I have the honour to submit an opinion regarding the suggestions for punishing habitual criminals more stringently.

OPINION.

Subject to the following remarks, the suggestion of the Madras High Court referred to in paragraph 6 of the Government of India's No. 427, dated 31st May last, together with frequently repeated injunctions to Magistrates to bear in mind the law regarding the trial and punishment of habitual offenders, and close scrutiny of the monthly returns, seems to me to be the best solution of the difficulty in question. I would suggest that the option contemplated by the Madras High Court should be given to the accused at the time when, if declined, he would be *charged*, and *not* at the time when the Magistrate has finished the trial and has convicted. No criminal in his senses would hesitate, after conviction, to elect for re-trial, and consequently a fresh chance of acquittal, before a jury, since he would thereby have everything to gain and nothing to lose. On re-conviction by the jury he would merely be sentenced by the same Judge to whom, if the option of committal had been refused, he would have been sent on conviction by the Magistrate for sentence. Thus (1) a great waste of judicial power would ensue, the Magistrate's whole proceedings ending in no result save a committal; (2) the prosecution would be prejudiced, a fresh opportunity to supplement weak points in the defence, exposed by the Magistrate, being afforded to the accused; and (3) much additional trouble, loss of time, and exposure to the annoyances of the police would be entailed on innocent witnesses.

2. I would further limit the obligation of the Sessions Court to hear the offender by restricting his right to be heard by the question of *sentence*. Unless the Sessions Judge is to sit in appeal from the conviction, what is the good of his hearing the accused against it? Why should not District Magistrates, who have been invested with powers under Section 30, be empowered to relieve the Sessions Judge of the proposed duty?

From E. W. PARKER, Esq., Registrar, Chief Court, Punjab, to the Officiating Chief Secretary to the Government of the Punjab,—No. 4622 G., dated Lahore, the 14th November 1890.

All Divisional and Sessions Judges, and the District Magistrates of—
Lahore.
Rawalpindi.
Delhi.
Umballa.
Amritsar.
Peshawar.

In reply to your No. 628, Home—Judicial, dated the 3rd July last, and subsequent reminders, regarding the punishing of habitual criminals more stringently, I am desired to forward copies of the opinions of Sir Meredyth Plowden and of Messrs. Roe and Benton, Judges, together with the opinions in original of the officers noted in the margin, who have been consulted in the matter.

Opinion of MR. JUSTICE A. H. BENTON, Judge, Chief Court, Punjab,—dated the 3rd November 1890.

In the Punjab nearly all Magistrates of districts exercise powers under Section 30 of the Criminal Procedure Code, and as a rule they dispose of cases in which habitual criminals are concerned. Any failure to deal with such cases on their part is brought to light by the returns, and immediately becomes the subject of animadversion by the Sessions Judges and the Chief Court.

Assuming for the sake of argument that it is desirable to more extensively use the provisions of Section 75 of the Penal Code, and to inflict sentences of long periods of transportation and transportation for life on habitual offenders as regards offences against property, although I feel sure that there are very few cases in this Province which have been inadequately dealt with, the first difficulty to be surmounted, I think, is to persuade Magistrates and Sessions Judges that it is right and reasonable to inflict on, say needy, persons who have committed three or four not very serious offences against property, the same punishment,—I mean transportation for life,—as is awarded to persons who have committed capital crimes and forfeited their lives. Such a course has a new resemblance to the practice of recent times before the English penal laws were amended, when a man might be hanged for stealing a sheep which is now generally referred to with the strongest disapproval, if not with horror. I must say that the incongruity of awarding the same punishment for acts, the heinousness of which is so widely different, strikes me forcibly. It would perhaps be desirable to vary the treatment of the prisoners after transportation so as to meet the cases of murderers and habitual offenders against property, and to let it be generally known that this was the practice.

If this objection were got over, I think that the most satisfactory procedure for trying habitual offenders in this Province would be to extend the powers of Magistrates invested with powers under Section 30 of the Criminal Procedure Code to the infliction of transportation for life or other sentence under Section 75 of the Penal Code. Each case would in the ordinary course come before the Sessions Judge for confirmation, save where the Frontier Crimes Regulation is in force, and he would deal with the case as he thought proper.

These are all the suggestions I have to offer.

Opinion of MR. JUSTICE C. A. ROE, Judge, Chief Court, Punjab,—dated the 4th November 1890.

I think the present law if properly worked is quite sufficient. It may be a question whether a system of police surveillance upon release might not be adopted for habitual criminals.

Opinion of SIR MEREDYTH PLOWDEN, Judge, Chief Court, Punjab—dated the 11th November 1890.

Our opinion is desired only upon paragraphs 5 and 6 of the Government of India letter.

As to paragraph 6, the expedient suggested seems to me to be a clumsy one. On principle it is desirable that the Court which convicts should fix the sentence at least in the first instance, even if the order as to sentence is not final. To give the accused a voice in determining the Court which shall try him seems inadvisable, and enables him to cause the very inconvenience to prosecutors and witnesses which it is thought desirable to avoid.

I look at the matter in this way. Habitual offenders are an exceptional class of criminals, for whom the law prescribes exceptional punishment within limits defined by law, at the discretion of the Court which tries and convicts them.

Let them be treated as an exceptional class in regard to the passing of sentence. If the offence committed is one cognizable by a Magistrate of the 1st class, there seems to be no reason why it should be tried by a superior Court merely because the offenders have been previously convicted.

As to Magistrates passing a sentence of imprisonment for a term exceeding two years. In a considerable portion of India District Magistrates are empowered to pass sentences up to seven years' rigorous imprisonment, subject to confirmation by the Sessions Judge when the term of imprisonment exceeds four years. In frontier districts of the Punjab by special legislation additional District Magistrates may pass similar sentences. Any 1st class Magistrate may, under Section 35, Criminal Procedure Code, pass at one trial a sentence of four years' imprisonment subject only to appeal. The High Courts under Section 439, Criminal Procedure Code, may enhance sentences passed by Magistrates up to the limit of the ordinary power of a Magistrate of the 1st class, that is, up to two years' imprisonment for a single offence. This limit of the ordinary power of Magistrates, and consequently of the High Courts, is merely arbitrary, and may be extended without any departure from principle.

My suggestions accordingly are—

(1) Define "habitual offender" as a person who, having been convicted of two or more offences of the kinds mentioned in Section 75, Indian Penal Code, is liable to be sentenced under that section.

(2) Enact that a habitual offender shall be liable to be sentenced under Section 75, Indian Penal Code, to imprisonment for a term not exceeding seven years upon conviction by a District Magistrate or a Magistrate, 1st class, specially empowered in that behalf by a Local Government.

(3) Enact that every District Magistrate and every Magistrate, 1st class, specially empowered in that behalf by the Local Government, may pass the above sentence on a habitual offender convicted by him under Section 75, Indian Penal Code, the sentence being subject to confirmation by the Sessions Judge when the term of imprisonment exceeds four years.

Possibly it may be expedient to add Presidency Magistrates to the Magistrates already mentioned.

(4) Amend Section 439, Criminal Procedure Code, by enabling the High Court to pass upon a habitual offender convicted by a District Magistrate or Magistrate, 1st class, under Section 75, Indian Penal Code, a sentence of imprisonment for a term not exceeding seven years.

Lastly, in this connection, I would suggest that the maximum term of imprisonment awardable under Section 403, Indian Penal Code, should be extended to three years.

There are sometimes instances of cattle theft (in its popular sense) which are technically offences under Section 403, and not under Section 379, Indian Penal Code, because the prosecutor is unable to prove that the cattle were taken out of his possession, as when there is evidence that they had strayed before they were found with the accused. The definition of "stolen property," however, includes not only property of which the possession was acquired by theft, but also property criminally misappropriated, and in the class of cases mentioned, the receiver is liable to three years' imprisonment, while the misappropriator, whose dishonesty equals that of a thief, also liable to three years, is liable to only two. Moreover, the conviction under Section 403, Indian Penal Code, is one that cannot be taken into account under Section 75, Indian Penal Code, while the conviction under Section 379 or Section 411, Indian Penal Code, can. Certainly many cases occur falling under Section 403, Indian Penal Code, which as much deserve three years' imprisonment as cases falling under Section 379 and Section 411, Indian Penal Code, in which that term is properly awarded.

In regard to the remarks in paragraph 5 of the Government of India letter, I think enough has been done in reminding Judicial authorities that the sentence of transportation for life is awardable under Section 75, Indian Penal Code.

It hardly seems wise to go further and attempt to regulate the exercise by the Courts of the large discretion as to sentence which is advisedly given to them by law. I do not think Criminal Courts do consider, or ought to be required to consider, the question of sentencing convicted criminals with a view to their reformation. The duty of the Courts is to punish adequately in order to deter the convicted offender and other persons, not to reform the convict. That may be a desirable object, but the achievement of it is not the business of the Courts, and some provision for the detention of the offender, under legal authority in a reformatory building, or if need be, a settlement, in addition to his sentence, would be a more appropriate means than a sentence of transportation with its alluring prospect of comparative liberty and license to trade after ten years. I would rather see prison discipline made more stringent, so as to prevent any desire to return there; and even now I consider a sentence of seven or ten years' rigorous imprisonment far more severe and deterrent than a sentence of transportation for a like term.

I think, too, there is some danger of "vulgarising" transportation as a sentence. Some years ago a life sentence had its terrors, and a convict transported was regarded as more hopelessly lost to his family and friends than if he had been hanged and his corpse been made over to them for burial or cremation. But life prisoners and prisoners sentenced to short terms of transportation often return to their homes, and the accounts they are in a position to give of this kind of punishment is not calculated to strike terror into others who are willing to commit crimes and risk detection and consequent punishment.

I need add nothing as to the controversy, of which the Government of India is doubtless aware, which has recently arisen in England, whether it is just to punish a convict more severely when he is convicted again because he has been convicted before, ignoring the circumstance that he has already been punished for the prior offence. There is a diversity of opinion and consequently of practice there, and there is room for it here, so long as the law leaves a discretion to the Courts. But there is this vast difference, that in this country the discretion of lower Courts in the matter of sentences is subject to the discretion of the High Courts, which can either reduce or enhance punishments (within prescribed limits) so as to ensure something approaching to uniformity. This power should not be curtailed, though it may with propriety be enlarged, as I have proposed above.

From R. L. HARRIS, Esq., Sessions Judge, Delhi Division, to the Registrar, Chief Court, Punjab,—No. 154, dated the 4th August 1890.

In reply to your printed letter No. 3412 G., dated 30th ultimo, enclosing copies of correspondence, I beg to state that I understand the opinion called for is only as to paragraphs 5 and 6 of the Government of India letter.

2. As to paragraph 5 above referred to, I apprehend there are not very many cases in which a Court would feel justified in sentencing a habitual offender to transportation for life. The advantages of transportation for a term of years over ordinary imprisonment are, I consider, apparent to every judicial officer. There is no doubt something wrong in a system which allows a hardened offender to pass from one sentence of imprisonment to another, and on the termination of each imprisonment to find himself released on the scene of his former misdeeds, known by all the neighbours and every policeman as a man who in the interest of all should be caught out again as soon as possible. Transportation most certainly gives him at least a chance of a fresh start in life.

3. As I have implied above, I consider the District Magistrate's enhanced powers amply sufficient to deal with ordinary cases where previous convictions have been recorded against the offender. There are in my opinion not many cases in which a sentence of transportation for seven years for offences against property would be inadequate. Further, I believe that where a criminal has a previous conviction against him of, say, four to seven years, he is almost invariably committed to Sessions, so I cannot see that any advantage will accrue from this contemplated development of the principle of Section 349, Criminal Procedure Code. The only result will be to shift on the Sessions Court the burden of many cases, which, if only in the interests of his own authority, the District Magistrate with enhanced powers should try and has adequate powers to try, and some extra burden it would be on Sessions Courts, for I presume the merits of the case and the justice of the conviction in such references as are proposed would have to be gone into.

From E. B. STEEDMAN, Esq., Deputy Commissioner, Rawalpindi, to the Registrar, Chief Court, Punjab,—No. 1825 G., dated the 5th August 1890.

I have the honour to reply to your No. 3426G. of 30th ultimo.

2. The question is what measures should be taken to punish habitual criminals more severely.

3. I do not think that in this Province anything is ever discovered *during trial* as to the previous antecedents of an accused. The Police invariably make full enquiries regarding the past history and past convictions of an accused before he is sent up for trial, and it may be assumed that everything that can be known is known and stated in the record of the Police enquiry.

4. Every case in which the accused has been previously convicted of an offence under Chapters XII and XVII of the Indian Penal Code should be put before the Magistrate of the district for orders. This procedure is, I believe, now always followed. The District Magistrate should, after considering the nature of the previous convictions, direct the accused to be tried by a Magistrate or to be committed to the Sessions, or should try the case himself under

Section 30. The accused will only be tried by a Magistrate when a sentence of two years' imprisonment is deemed sufficient. I would recommend that in cases tried by the District Magistrate under Section 30 the Magistrate should have power to sentence to seven years' imprisonment without the sanction of the Sessions Judge. If a District Magistrate is fit to be *trusted with* the powers to award imprisonment up to four years, he can surely be trusted with the powers to award three years more. Personally,—and I know the feeling is shared by other District Magistrates,—I prefer sentencing to four years and not sending the case for sanction to a Sessions Judge to giving a sentence of seven years and sending proceedings for sanction, though I may consider that a sentence of seven years is merited.

5. The plan of having habitual offenders tried by Magistrates (I presume not District Magistrates) and the proceedings in case of conviction sent to the Sessions Judge for sentence does not commend itself to me. It is most unsatisfactory, except when the case is most clearly proved, that the evidence should be taken and a finding recorded by one Magistrate than that another Magistrate should accept that finding and pass sentence. In many cases the sentencing Magistrate will find himself unable to agree with the Magistrate who has made the enquiry merely upon the recorded evidence. As every Magistrate knows, the demeanour of the witnesses and the character of their answers have in this country a most material influence on the Magistrate trying the case. On paper a witness's evidence, which you can say is most certainly false, may not exhibit a single flaw. Action is at present very seldom taken under Section 349 of the Criminal Procedure Code, and only in special cases. I cannot recommend that this procedure should be extended to the cases of habitual criminals. These cases, when a sentence of transportation should in the opinion of the District Magistrate be awarded, should be tried *ab initio* by the Sessions Judge. If it is urged that the Sessions Judge has not time, I reply that the petty civil appellate work that he at present does should go somewhere else.

From T. J. KENNEDY, Esq., Deputy Commissioner, Lahore, to the Registrar, Chief Court, Punjab,—No. 2933, dated the 6th August 1890.

In reply to your Circular letter No. 3425, dated 30th July 1890, forwarding a copy of certain correspondence containing suggestions for punishing habitual criminals more stringently, and asking my opinion on the subject, I have the honour to state as follows.

In my opinion the suggestions made in paragraphs 5 and 6 in the Government of India letter to all Governments, except that of the Punjab, are feasible, and are calculated to result in a diminution of crime. A Judicial officer has always great difficulty in dealing with a habitual offender. The main object of punishment is to be deterrent. Cases constantly arise. I tried one on the 2nd of August 1890, in which sentences of imprisonment seem to have no effect upon a habitual offender. Perhaps officers have hitherto passed unduly lenient sentences on such offenders because it seemed unnecessarily harsh to sentence a convicted prisoner to long years of imprisonment for a petty theft as in the case I have just referred to, in which I sentenced the prisoner to four years' rigorous imprisonment and 30 stripes for theft of 8 annas worth of wood. The difficulty in the way of committing such prisoners to the Sessions in such cases was not only that it would cause inconvenience to prosecutors and witnesses, but that each Session trial in an outlying district involving the visit of the Sessions Judge, the summoning of assessors, and the Sessions Judges being officers with plenty of other work, it seemed unnecessary to commit such prisoners, when a sentence of seven years' rigorous imprisonment might be passed by a District Magistrate, and the Sessions Judge might be reluctant to pass a more severe sentence. I think the suggestions made, if carried out, will remove the difficulties in dealing with habitual offenders which now occur.

From T. O. WILKINSON, Esq., Divisional Judge, Amritsar Division, to the Registrar, Chief Court, Punjab,—No. 777, dated the 6th August 1890.

I have the honour to reply as follows to your No. 3417 G, dated 30th ultimo.

The provisions of Section 75, Indian Penal Code, do not appear to me to be overlooked in this Province, and the very general investment of District Magistrates with power under Section 30, Criminal Procedure Code, minimizes the temptation to abstain from committing to the Sessions Court.

2. It appears to me that District Magistrates when exercising their powers under Section 30 might more often avail themselves of the provisions of Section 59, Indian Penal Code, and I see no objection to the proposal of the Madras High Court, that in cases where they consider a severer sentence deserved than they are competent to award, District Magistrates should be empowered to refer the case to the Sessions Court, in the same way as subordinate Magistrates under similar circumstances are empowered to refer to District Magis-

trates for enhancement of punishment; on the contrary, there is everything to recommend it. The jury system being (happily) unknown to the ordinary sessions case in the Punjab, the objection to its own proposal raised by the Madras High Court has no application thereto, and the proposal of the High Court sufficiently meets its own objection.

3. I question whether it would not be an advantage to empower District Magistrates throughout India to pass sentences as provided by Section 30, Criminal Procedure Code. There can, I think, be no doubt that, where a commitment is necessary, it is often avoided. A Magistrate not unnaturally hesitates to throw an additional burden on an officer as it is generally overburdened. It is not clear to me why a more cumbrous method of punishing a habitual criminal should obtain in Saharanpur (for instance) than prevails in its next neighbour, Umballa. I think it is also matter for consideration whether the proviso to Section 349, Criminal Procedure Code, might not be repeated, so as to legalize a District Magistrate's proceeding, if he felt able so to do, on the record of a Magistrate subordinate to him. A proposal to this effect, as I seem to recollect, has already been made.

4. The Commissioners' assumption that the judiciary of India are unacquainted with the provisions of Section 75, Indian Penal Code, is as gratuitous as their proposal for indiscriminate sentences of transportation for life is crude. It is because the judiciary desire to discriminate between punishments to be meted to offenders that they advocated the amendment embodied in the section as it stands. The Commissioners' researches into the state of the criminal law,—an ignorance of which they impute to the judiciary called on to administer it,—do not seem to have included that amendment.

5. The principal difficulty in dealing with these cases is to obtain a proper record of previous convictions if the offender belongs to a district other than that in which he is tried. The only suggestion I have to offer is that directly any person is convicted of an offence to which Section 75, Indian Penal Code, applies, the fact should be reported to a central office (the Central Police Office would be the most appropriate), and any Magistrate on reference to such office could be supplied with information, the report of the central authority being evidence in the case like the reports of the Chemical Examiner. This system would perhaps serve until the Indian criminal became alive to the beauty of an *alias*; thereafter some other system would have to be adopted. In the case of districts bordering on other administrations such intimation should be given to the District Magistrate of the contiguous district, who would report to his central authority. This would of course involve additional labour, and consequently larger establishments, but if the Government of India wants increased efficiency, it must pay for it.

From C. E. GLADSTONE, Esq., Deputy Commissioner, Umballa, to the Registrar, Chief Court, Punjab,—No. 1641, dated the 7th August 1890.

I have the honour to reply to your No. 3428G of the 30th July 1890, regarding certain suggestions under consideration of Government for punishing habitual criminals more stringently.

2. My opinion is that transportation for life might well be given more than it is in cases in which the offenders are clearly incorrigible, as many offenders certainly are. However, the punishment is such a frightful one that I should be sorry to see it given or have to give it myself, unless it was very clear that the man could not be deterred by a shorter sentence, *e.g.*, seven years. Now, cases occur sometimes in which men are sent up to the District Magistrate to be tried under his enhanced powers, and after the trial is partly over the case appears to be one in which more than seven years ought to be inflicted. I would suggest that in such cases, as well as in those tried by Magistrates of the 1st class, a conviction might be recorded, and the case sent up to the Sessions Judge for sentence. It is not likely that Sessions Judges would give transportation for life too freely, or that District Magistrates would needlessly send up such cases. I think it would certainly have an excellent effect if Magistrates of the 1st class could record a conviction and send the case to the Sessions Court for sentence. There is no doubt that witnesses simply detest being sent up to the Sessions, and are, moreover, often tampered with before the Sessions come round. The objections raised by the Madras High Court would not apply here, as cases are not tried with juries but with assessors.

From T. TROWARD, Esq., Divisional Judge, Jullundur Division, to the Registrar, Chief Court, Punjab,—No. 499, dated the 9th August 1890.

In reply to your No. 3414G, dated the 30th July, I have the honor to state that in my opinion the suggestion of the Madras High Court should be acted upon. If all, or even a large

proportion, of the cases which become cognisable by the Court of Session merely by reason of the offender's previous convictions, were committed for regular trial in the Sessions Courts, it would be quite impossible for the Sessions Judges in this Province to carry on their work as Divisional Judges, and the disposal of civil business would suffer greatly in consequence. I would therefore strongly support the suggestion that the duty of the Sessions Court should be limited to awarding an appropriate sentence on the conviction by the Magistrate.

From W. R. H. MERK, Esq., C.S.I., Deputy Commissioner, Peshawar, to the Registrar, Chief Court, Punjab,—No. 1380, dated Peshawar, the 11th August 1890.

I have the honour to acknowledge the receipt of your letter No. 3430G, dated the 30th July 1890, which encloses correspondence relating to measures for punishing habitual criminals more stringently.

2. In reply I would state that the suggestions contained in paragraphs 5 and 6 of the Government of India letter quoted in the margin will, if adopted, certainly lead to the repression of habitual crime.

Home Department No. 427, dated the 31st May 1890.

They are briefly—

(*a*) sentences of transportation for habitual offenders;

(*b*) prosecuting officials to pointedly draw the attention of the Courts to the inadequacy of short sentences of imprisonment in the case of habitual offenders;

(*c*) Magistrates be empowered to enter convictions of habitual criminals, and to refer the convictions for adequate sentences to the Sessions Courts.

3. As regards (*a*), I would point out that habitual criminals, especially thieves, are very often men of inferior physique and health, and that in many cases the Jail Departmental Rules would forbid the carrying out of sentences of transportation if given. I believe this consideration often leads Magistrates to pass sentences of imprisonment only; for if transportation is owing to ill-health or other reasons commuted to one of rigorous imprisonment of the same period, it becomes a far more stringent punishment, ten years say in jail being a more severe sentence than ten years' transportation.

Then, again, as matters stand at present, allowance must be made for individual judgment. The case I am about to mention occurred recently in this district, and is quoted simply as an illustration, and not in any way as criticism. A man whose criminal career was much like that of several of the men given in the extract from Mr. Lyall's and Dr. Lethbridge's letter to the Government of India of the 26th April 1890, was sentenced to transportation by the Additional District Magistrate. The sentence was altered to one of 30 stripes by the Judges. It is a subject on which perhaps hard-and-fast rules might with advantage be issued. A definition of "habitual criminal" is given for jail purposes in the Resolution of the Government of India, Home Department, No. $\frac{21}{1804\text{-}14}$, dated the 14th December 1886. For the guidance of Magistrates I think a clear definition should be published, and the action of Magistrates should be authoritatively prescribed in respect of such criminals.

If the matter is to be dealt with systematically, little latitude can be given to individual judgment.

4. In this Province the Police act as prosecutors in Magisterial Courts, and it should be the duty of the Police instructed by departmental orders to draw the attention of the Courts to the necessity for adequate sentences as proposed by the Government of India.

5. In giving permission to Magistrates to refer cases to the Courts of Sessions, I would not, as recommended by the Madras High Court, bind the Judge to hear the offender before passing the adequate sentence. Every such offender will in that case as a matter of course appeal, and the proceedings will virtually resolve themselves into additional appellate work. I would trust the judgment of the Magistrates and leave the prisoner to appeal if he likes from the sentence of the Sessions Court. Such appeals would probably lie to the Chief Court.

6. It is, I think, essential that all cases involving "habitual criminals" be tried by Magistrates of the 1st class only. Magistrates of the 2nd class can of course not pass adequate sentences themselves, and, being natives,—a few junior Assistant Commissioners and Extra Assistant Commissioners excepted,—they have an invincible repugnance to sending a man up for an enhanced sentence.

In order to maintain a proper supervision over 1st class Magistrates, many of whom also err on the side of leniency to habitual criminals, I would add a column to Monthly Statement No. II, showing how many habitual offenders have been sentenced by them, and what orders

have been passed. The subject of the treatment of habituals might also with advantage be specially noticed in the annual District Criminal Justice and Police Reports.

From R. W. TRAFFORD, Esq., Divisional Judge, Rawalpindi Division, to the Registrar, Chief Court, Punjab,—No. 995, dated the 18th August 1890.

In reply to his No. 3422 G, dated 30th July 1890, has the honour to state that he fully approves of the proposal to enable Magistrates of the 1st class to refer cases of habitual criminals to Sessions Judges in a manner similar to the procedure under Section 349. This is the only point on which addition to the present law seems proposed, or on which an opinion is necessary.

From F. C. CHANNING, Esq., Divisional Judge, Hoshiarpur Division, to the Registrar, Chief Court, Punjab,—No. 671, dated the 23rd August 1890.

I have the honour to reply to your No. 3415 G, dated 30th July, on the subject of the treatment of habitual criminals.

2. I am of opinion that the best sentence which can be passed on a man whose conduct has shown that he has become a habitual or professional criminal is transportation for life, provided that the changes which the executive authorities have introduced in the carrying out of such sentences are abolished.

3. I am not at present able to refer to the report of the original framers of the Indian Penal Code; but, unless my memory is at fault, their intention was that transportation should be a punishment different in kind from imprisonment, and one very important feature of it was to be that the offender was to be permanently severed from his old associations; and seeing that he was thus permanently exiled, and looking to the effect which this absolute disappearance would produce on the minds of his old associates, it would be probable to treat him, if well behaved, with comparative leniency in his new abode.

4. This has now all been altered: a sentence of transportation for life means a sentence for 20 years, which may be further reduced to about 18 years. And further, if the offender is young and strong, he will probably be sent to the Andamans, where, if well behaved, he will have a fairly comfortable life, but if he is old or weak he will be sent probably to the Lahore or some other Central Jail, where (unless I am very much mistaken) he will be treated precisely in the same way as if he had been sentenced to 20 years' imprisonment. I maintain that this last is a much more severe sentence than the law ever intended to be applied, and I call attention to the fact that on a second conviction for theft, while a sentence of transportation for life can be passed, a sentence of more than six years' imprisonment would be illegal. As a Judge, if a man were brought before me for theft, and it were shown that he had been previously convicted, and in fact evidently a habitual thief, I should be much more ready to pass a sentence of transportation for life, if I knew that this would not be converted by the executive authorities into the very different punishment of imprisonment for 20 years. There is no crime punishable under the Indian Penal Code with more than 14 years' imprisonment, and a sentence of ten years' imprisonment is the heaviest that can be awarded under Section 75.

5. As long as the present orders remain in force, I think that the sentence of seven years' imprisonment, which the District Magistrate can inflict with the sanction of the Sessions Judge, is sufficient in all but very exceptional cases.

6. But the District Magistrate is a busy man, and in some districts, *e.g.*, Lahore, he really cannot try all the cases in which the offender deserves more than two years' imprisonment and fine. And these offenders would be more likely to meet with their deserts if some selected Magistrates could be invested with power to sentence to four years' imprisonment and fine subject to the confirmation of the sentence by the District Magistrate. I recommend an amendment of the Criminal Procedure Code allowing the granting of such powers.

From SARDAR MUHAMMAD HYAT KHAN, C.S.I., Divisional Judge, Mooltan Division, to the Registrar, Chief Court, Punjab,—No. 177, dated the 25th August 1890.

In reply to your No. 3420G, dated 30th July, I have the honour to express my opinion as follows on the subject of punishing habitual criminals more stringently.

I think in the case of professional criminals convicted of offences against property transportation for life is the a most appropriate sentence. Offenders against property are more dangerous to society than any other class of criminals. When such offenders become incorrigible

professional criminals they are plagues to society and must be got rid of. Obviously this is the chief reason of the enactment of Section 75 of the Indian Penal Code. Sentence of transportation for life in the case of such criminals is called for not so much on the ground that it is likely to have more deterrent effect than imprisonment as on the ground that society should get rid of such persons. It is doubtful whether severe sentences can do much towards decreasing the crime, while the criminals have ample chances of escaping undetected or unpunished. A person inclined to commit a crime rather thinks of chances of escaping undetected or unpunished than of the nature or amount of sentence he may receive in case of conviction. I think it is chiefly efficient and honest Police that can check crime.

2. I have said that transportation for life is the most appropriate sentence for professional offenders against property, but I must also say that the Courts should not be bound to hold merely from a previous conviction that the accused is a professional criminal. It may be that the conviction is such that if it had come before the Court in appeal it would have been set aside; ordinarily a conviction has only this effect, that it is a bar to the second trial for the same charge (Section 40, Evidence Act), and is not relevant otherwise (Section 43, Evidence Act). Were it not for Section 54 of the Indian Evidence Act, amendment of which is under proposal before the Legislature, and Section 75 of the Indian Penal Code, previous convictions would not be evidence in a subsequent proceeding against the accused for the purpose of showing that he was really guilty of the offence of which he was convicted. In other words, the Courts would not be bound to take it conclusively proved that the accused had committed the offence. The wording of Section 75 is apparently based on expediency, and is an artificial exception to the rules of evidence. Had the wording of the section been "whoever for the second time commits an offence, etc.," the Court trying the second offence would be bound to find for itself whether the accused had previously been guilty of an offence of the same description notwithstanding the previous conviction.

3. The law, as it is, being based on expediency, I would suggest that while the previous convictions should continue to be admissible in evidence for the purpose of giving an enhanced punishment, the Courts should be empowered, on conviction of a person under Section 75, Indian Penal Code, to make enquiry similar to that made under Sections 109 and 110 of the Criminal Procedure Code in order to be satisfied whether the accused is a habitual offender or not. I would also suggest that unappealable sentences should not be used at all for purposes of Section 75 of the Indian Penal Code, if it is not expedient to make all sentences appealable. I do not see why a person convicted of assault by a Magistrate of the 1st class and sentenced to R51 fine should have right of appeal, but a person convicted of heinous offence, including offences falling under Chapters XII and XVII of the Indian Penal Code, should have no right of appeal in case of sentence being one month's imprisonment, or three months' imprisonment when the accused is tried summarily, and yet the latter conviction may be used for transporting the accused for life. It may not be out of place here to state that in the Punjab, to which my experience is limited, sentences are passed very indiscriminately and arbitrarily. It does not unfrequently happen that a young person guilty of a petty theft who is a fit person for whipping gets a long term of imprisonment, while a habitual offender when convicted of burglary escapes with comparatively a light punishment.

4. As to the suggestion that in cases falling under Section 75 of the Indian Penal Code Magistrates should be empowered to enter a conviction and refer the case to Sessions Court for an adequate sentence, my opinion is that it is always unsatisfactory to pass a sentence on the conviction of another Court. The provisions of Section 349, Criminal Procedure Code, to my mind, cannot be reconciled with the provisions of Section 350 of the Code. Under the latter section, when evidence is recorded by a Magistrate, who is succeeded by another Magistrate before judgment, the accused has the right of demanding that the witnesses be re-heard, while under Section 349 he has no such right. I think that the existence of Section 349, the soundness of which is questionable, is no reason for enacting another provision empowering Magistrates to enter conviction in cases falling under Section 75 of the Indian Penal Code, and refer the case to the Sessions Court. Besides, in the Punjab, in consequence of the amendment proposed, the work would be considerably increased in the Sessions Courts. If the suggestion is adopted, there will be the necessity of appointing Assistant Sessions Judges in the Divisions where the criminal work is heavy.

5. At present cases of previous convicts are supposed to be ordinarily heard in the Punjab by the District Magistrates, though in fact such cases are not often heard by them. The reason probably is that the Magistrate before whom a person is accused under Section 75, Indian Penal Co[illegible] a grea[illegible] send the case to the District Magistrate. The wording of Section 348 [illegible]ences are often given [illegible] it optional with him to send the case to the District

Magistrate or not. I suppose the Subordinate Magistrates think that District Magistrates are reluctant to take up such cases for fear of being overworked. Again, the District Magistrate cannot pass a sentence of transportation for life. My opinion is, that even in the Punjab the cases of the nature in question should ordinarily be committed to the Sessions Court, and if there were no financial difficulties, Assistant Sessions Judges should be appointed in each Division with power to try such cases by jury or with the aid of assessors in each district as sessions cases are tried by Sessions Judges.

6. The Assistant Sessions Judges may be invested with enhanced power to pass sentence of transportation for ten years, or rigorous imprisonment for the same term in cases in which they consider such punishment sufficient; and where the offender seems to deserve a more severe punishment, the Assistant Sessions Judge should enter a conviction and refer the case for confirmation to the Sessions Judge, who may have power to confirm, under Section 380 of the Criminal Procedure Code, a sentence of transportation for life.

If, however, the financial difficulties do not permit the appointment of Assistant Sessions Judges, the District Magistrates may be appointed as Assistant Sessions Judges in their own districts, and empowered to try habitual criminals committing offences under Chapters XII and XVII of the Indian Penal Code, and sentence them, under Section 75, Indian Penal Code, to seven years' rigorous imprisonment or transportation, and (as in the case of Assistant Sessions Judges) to try cases by jury or with the aid of assessors, and submit the proceedings to the Sessions Judge for confirmation, if in their opinion the offender deserves a punishment more severe *than* seven years' rigorous imprisonment or transportation, or a sentence of transportation for life.

7. I see no reason why the accused should be deprived of the right of trial by jury or with the aid of assessors where the law permits it. The deprivation of this right will create discontentment. The suggestion that the District Magistrate should, at the commencement of the trial, offer the accused the option of a committal for trial by jury or with the aid of assessors before the Sessions Court, or of trial before the District Magistrate without a jury or the aid of assessors, would gradually result in this, that all habitual offenders would desire to be tried by the Court of Sessions, and practically the desired object would not be attained.

8. The substance of my opinion briefly is —

(1) that under the restrictions aforesaid the effect of sentence of transportation for life passed upon habitual offenders under Section 75, Indian Penal Code, would create a beneficial result:

(2) that such cases may be tried by Sessions Judges by jury or with the aid of assessors: or

(3) that Assistant Sessions Judges may inquire into and try such cases by jury or with the aid of assessors in the manner stated above: and

(4) that District Magistrates may be invested with the powers of Assistant Sessions Judges as stated above.

From G. L. Smith, Esq., Divisional Judge, Umballa Division, to the Registrar, Chief Court, Punjab,—No. 112, dated the 28th August 1890.

I have the honour to reply to your Circular No. 3413G, dated 30th ultimo, with reference to the more stringent punishment of habitual offenders.

2. I beg to express my concurrence in the view that habitual offenders do not usually receive sufficiently severe sentences. The cause is to a great extent owing to the difficulty the superior Courts (Sessions Judge and District Magistrate) have in finding time for such cases, which time, too, if found, is apt to be grudged, as the cases themselves are often of the simplest nature, their importance is alone owing to the fact of previous convictions. The proposed plan for Magistrates to try these cases and send them up for sentence to the District Magistrate or Sessions Judge is exactly suited to meet the difficulty, and in my opinion is a very excellent proposal. By this means it would be certain that habitual offenders would receive adequate sentences, including no doubt sentences of transportation as proposed by the Government of India. Transportation would probably be very suitable for those offenders for whom our jails have no terrors but the contrary.

From A. Christie, Esq., Divisional Judge, Peshawar Division, to the Registrar, Chief Court, Punjab,—No. 170, dated the 30th August 1890.

In your letter No. 3424G of 30th July, you call for an opinion, but a man[illegible] suggestions made by the Government of India for punishing habitu[illegible] return.

2. I think that great benefit would ensue if the suggestions of the Madras High Court were carried out, and all Magistrates empowered to enter a conviction in the case of habitual criminals and refer the case to the Sessions Court for an adequate sentence, but I am not in favour of giving the prisoners the option of being committed for trial before the Court sitting with assessors. Assessors are only called upon to give an opinion as to the guilt or innocence of a prisoner,—a point on which there is generally no doubt in cases of the kind under discussion; and if there is any doubt it can be adequately settled by the Magistrate, the Sessions Judge and the higher courts on appeal. My experience is that assessors pay very little attention to cases which present no special points of interest, and it is by no means uncommon to see one or all of the assessors fast asleep during the greater part of an ordinary trial. They would not be called upon to give an opinion on the sentence to be passed, which would be the vital point for consideration.

3. Another point on which I would suggest an alteration in the law is that regarding the power to pass a sentence of whipping in addition to imprisonment, which at present can only be exercised in the case of a prisoner convicted twice for the "same offence." As the law stands, a man may have had four convictions under Sections 379, 380, 411 and 457, and if convicted hereafter under Section 458, a sentence of whipping in addition to imprisonment cannot be passed. In the case of habitual criminals a sentence of whipping in addition to imprisonment has a very good effect, and I think that it should be made legal in all cases of a second conviction for an offence against property.

From COLONEL R. T. M. LANG, Deputy Commissioner, Amritsar, to the Registrar, Chief Court, Punjab,—No. 1445, dated the 2nd September 1890.

In reply to your letter No. 3129G, dated 30th July 1890, and with reference to paragraphs 5 and 6 of the Government of India No. 427, dated 31st May 1890, on the subject of punishing habitual criminals, I beg to state—

(1) that I consider that a more liberal use should be made of Section 75 in awarding transportations for a term or for life in cases of incorrigible offenders; and

(2) that, in such cases, the suggestion made in the concluding portion of paragraph 6 of the Government of India letter is a good one.

The cases in question, in which transportation might be with advantage awarded, are generally of a simple nature, and in dealing with such I think the District Magistrate might be safely entrusted with the trial and conviction, leaving the question of sentence to be decided by the Sessions Judge.

From M. L. DAMES, Esq., Divisional Judge, Derajat Division, to the Registrar, Chief Court, Punjab,—No. 351, dated the 4th September 1890.

In reply to your docket, without number, forwarding for opinion copy of the correspondence marginally noted, on the subject of the more severe punishment of habitual offenders, I have the honour to state—

Punjab Government No. 628, dated 3rd July 1890. Government of India No. 427, dated 31st May 1890, and enclosures.

1. That, as far as I am aware, habitual offenders generally receive adequate sentences in the districts with which I am best acquainted. Should this not be the case in other parts of the country, I believe that the remedy would be found rather in increasing the power of the Magistrates than in sending a large proportion of cases before the Court of Sessions. In the frontier districts additional District Magistrates have been appointed who have powers under Section 30, and the same plan might be advantageously tried elsewhere, as in hard-worked districts the Deputy Commissioner cannot do much magisterial work.

2. There are, I consider, very few cases in which habitual offenders cannot be sufficiently punished under Section 30 of the Criminal Procedure Code. I do not remember meeting with more than one or two such cases in my experience in which a sentence of transportation for life could have been fittingly given. Should such cases occur they should no doubt be committed for trial by the Sessions Judge.

3. To deal effectively with habitual criminals, I believe that it is not so much necessary to give more severe sentences than are usual at present as to ensure greater certainty of conviction. The present tendency in legislation is to alter the law in favour of accused persons, as for instance the proposal in a Bill now pending to make proof of former convictions irrelevant except under special circumstances. There is also, no doubt, especially among Native Magistrates, frequently a great discrepancy between the offence proved and the punishment awarded; excessive sentences are often given for light offences, and light sentences for serious crimes.

The excessive sentences can be effectively dealt with by Sessions Judges, but the insufficient sentences as a rule have to stand, the power of enhancing sentences formerly exercised by Sessions Courts having been taken away from them by Act X of 1882. The restoration of this power to Sessions Judges would be one of the most efficient means of ensuring a regular and uniform system of punishment.

4. In paragraph 5 of the Government of India letter it is suggested that "the officers responsible for prosecutions should pointedly draw the attention of the Courts to the inadequacy of short sentences of imprisonment in cases of habitual offenders." This might no doubt be done where there are Public Prosecutors distinct from the Police. Where there are no such Public Prosecutors, I can see no better way to ensure sufficient sentences than to restore the power of enhancement to Sessions Judges, as suggested above.

5. The above suggestions refer only to the sentencing of convicted prisoners, and do not in any way affect the necessity of a proper surveillance of habitual offenders while at large. The old law regarding security was much more easily worked than the present, under which it is very difficult to put a bad character under security. It was never shown that the provisions on this point in the Criminal Procedure Code of 1872 were abused, and they were altered, to the advantage of the criminal classes, without, as far as I know, any actual cause being shown. The restoration of these powers, together with a proper surveillance of persons already convicted, would, in my opinion, do more to reduce crime than any occasional more severe punishment of individuals.

From J. R. DRUMMOND, Esq., Deputy Commissioner, Delhi, to the Registrar, Chief Court, Punjab,—No. 1004, dated the 19th September 1890.

In reply to your No. 3427 of the 30th July 1890, I have the honour to state that, in my opinion, the actual suggestions on the printed file have comparatively little application to this Province.

From LIEUT.-COL. H. J. LAWRENCE, Divisional Judge, Ferozepur Division, to the Registrar, Chief Court, Punjab,—No. 503, dated the 27th September 1890.

With reference to your No. 3416 G., dated 30th July last, I have the honour to say that so far as my experience goes, the state of affairs in the Punjab only faintly resembles that displayed in the extract (paragraph 27) from the report submitted to the Government of India by the Commissioners who visited the penal settlement of Port Blair with a view to examine the system in force there. I believe it is a rare occurrence for a man to appear before the Criminal Courts in the Punjab with more than four previous convictions recorded against him.

In my opinion, the sentences awarded to habitual offenders are very frequently too light; not because, I think, that under our system of jail discipline any sentence of imprisonment is likely to act as a deterrent, but because, so long as a man is in jail, he is unable to prey upon society. I therefore consider it would be advantageous if habitual offenders were generally transported for life.

Neither District Magistrates nor Sessions Judges have time to try all cases of habitual offenders, and it will be absolutely necessary to adopt the suggestion contained in paragraph 6 of the Government of India's letter if habitual offenders are to be dealt with as proposed: Sessions Courts would otherwise be overwhelmed with the extra work which would be entailed by the trial of these cases.

From J. F. D'O. BULLOCK, Esq., Divisional Judge, Jhelum Division, to the Registrar, Chief Court, Punjab,—No. 738, dated the 9th October 1890.

In reply to your No. 3421, dated 30th July last, I have the honour to say that if transportation be in fact a more severe form of punishment than rigorous imprisonment in a jail, the Magistrates should be urged to commute their sentences to transportation. When I was a Magistrate in charge of a district, men with seven years' transportation were rarely sent across the sea; and I doubted whether transportation was a severer punishment than imprisonment.

I have no belief in the reformation of habitual thieves, and I think the whole question resolves itself into a consideration of what punishment is most distasteful to these persons. If we could induce habitual offenders not to return to their homes, but to settle in the penal settlement, I should advocate a large resort to sentences of transportation, but a man who is under a seven-years' sentence is hardly likely not to wish to return.

I entirely agree in the suggestion contained in paragraph 6 of the Government of India letter. It is an opinion I have long held, and indeed I incline to doubt the necessity of a commitment to the Session (except in certain classes of cases) under a system which gives an appeal on questions of fact.

From M. MACAULIFFE, Esq., Sessions Judge, Sialkot Division, to the Registrar, Chief Court, Punjab,—No. 336, dated the 15th October 1890.

In reply to your Circular No. 3418 G. of the 30th July 1890, I beg to state as follows.

The provisions of Section 75 of the Indian Penal Code, which makes a recidivist in certain cases "subject for every such subsequent offence to transportation for life," is, I believe, practically a dead-letter, for Courts generally feel that transportation for life is too severe a punishment for ordinary offences against property. It will be seen from the notes to Section 75 in Mayne's Penal Code that High Courts have generally hedged round this provision of the law with several restrictions.

2. This being so, in the Punjab at any rate, charges against persons previously convicted have always been held to be adequately dealt with by Magistrates of districts exercising enhanced powers under Section 30 of the Criminal Procedure Code, and I do not think it is necessary to make any alteration in the present system, or to give Magistrates generally the powers proposed, namely, of entering a conviction and referring the case to the Sessions Court for an adequate sentence.

3. Apart altogether from the present competency of Magistrates of districts in the Punjab to deal with such cases, great experience and integrity in Magistrates are necessary in dealing with charges against old offenders. It is often only a tedious and patient cross-examination that will elicit the real character of a charge. In certain parts of the Punjab, at any rate, it has been, and is, considered a point of honour for a youth to commit a successful theft before he can bind a turban on his head or obtain a wife, but second offences by such persons are not common, and yet they are often charged against them. When a theft occurs in their neighbourhood and pressure is put upon the Police to discover the offender, the nearest person previously convicted is often sent for trial, and most plausible evidence concocted against him. So also in the case of disputes among neighbours, it is common enough to get up a totally false charge of theft against some previously convicted member of an obnoxious family.

A case of the latter description has recently been committed to the Sessions in this Division by one of the District Magistrates. The accused and prosecutor lived only about a mile apart. While hearing the case I discovered that there had been several previous quarrels and law suits between the members of both families. Among them one of the brothers of the accused had been charged with abducting a woman belonging to the prosecutor's tribe. At a distance of only about 1 mile from the scene of the offence, it would have been almost impossible for the accused to have concealed three head of cattle as stated by the prosecution. And finally I found a petition addressed to the District Magistrate by the accused and his brothers some months before the commission of the alleged theft, warning him of the enmity that existed between the families of the prosecutor and the accused. It is only severe cross-examination, in which the dramatic unities of time and place are rigidly attended to, that can generally elicit the truth in such cases.

Native Magistrates do not generally understand cross-examination at all, as any one can see from an inspection of their records, and in cases in which the Magistrate of the district has concerned himself to put pressure on the Police to discover offenders, the Native Magistrates are too apt to record convictions.

For these reasons I do not think that, in the Punjab at any rate, it is necessary to give Magistrates generally the option of recording a conviction and referring cases to the Sessions Court for enhanced punishment.

From COLONEL C. H. T. MARSHALL, Sessions Judge, Lahore Division, to the Registrar, Chief Court, Punjab,—No. 122, dated the 15th October 1890.

In reply to your general letter No. 3419G., dated 30th July 1890, and subsequent reminders, I have the honour to state that I have carefully considered the correspondence regarding the punishment of habitual criminals; and, as I am of opinion that no measures are necessary (in addition to those already in force) for more stringently punishing habitual criminals, I have no suggestions to offer.

The law, as it at present stands, appears sufficient for the punishment of such criminals if the Magistrates will carry it out properly.

CENTRAL PROVINCES.

From F. C. ANDERSON, Esq., Officiating Secretary to the Chief Commissioner, Central Provinces, to the Secretary to the Government of India, Home Department,—No. 1320—148, dated the 4th March 1891.

I am directed to acknowledge the receipt of your letter No. 1—422, dated the 31st May 1890, on the subject of more stringent regulations for the control of habitual offenders in India. It is pointed out in that letter that enquiries recently made into the state of crime in the larger Provinces of India have shown that improvements in communication have facilitated the operations of those criminals who are in the habit of leaving their homes to commit crimes at a distance; and with a view to counteracting such operations, it is suggested by His Excellency the Governor General in Council that those charged with the prevention and detection of crime should be armed with some new and special faculties wherewith to meet on more even ground adventurous criminals who are now favoured and aided by improved Railway, Telegraphic, and Postal communications. Among the means suggested by the Government of India for compassing this end are the maintenance of a register of suspected persons and the legalization of domiciliary visits. The Chief Commissioner's opinion is also desired on a draft Bill prepared by the Punjab Government which aims at effecting these objects, and moreover proposes to check the crimes of arson and cattle-poisoning which seem to be prevalent in the Punjab by a system of retributory compensation. Finally, the opinion of the Chief Commissioner is invited on the suggestion made by the Madras High Court, that where habitual offenders are concerned Magistrates should be empowered to enter a conviction and refer the case to the Sessions Court for sentence.

2. Having regard to the great importance of the questions treated in your letter, the Chief Commissioner thought it well before replying to consult the Judicial Commissioner, the Inspector General of Police, the Commissioners of Divisions and all Deputy Commissioners; and I am to forward herewith an abstract statement showing the opinions received from these officers. These opinions may be summarized as follow:—

(a) There is practically an unanimous opinion that it is desirable to legalize the surveillance of habitual offenders on the lines suggested by the Punjab Government.

(b) It is generally considered that the proposal to repress cattle-poisoning and arson by the levy of retributive compensation on the neighbourhood is not needed in these Provinces.

(c) There is practically unanimous approval of the proposal made by the Madras High Court to enable the Sessions Court to pass sentence on habitual offenders convicted by Magistrates. Two or three officers would give this power to District Magistrates invested with powers under Section 30, Criminal Procedure Code, as well as to Sessions Judges; but in this I am to say at once that the Chief Commissioner does not concur.

3. The Chief Commissioner concurs in the generally expressed opinion of the local officers, that the introduction of a surveillance system of the kind proposed by the Punjab Government is desirable. As regards the definition of the phrase "habitual offender," he would provide that a second conviction under Chapter XII or Chapter XVII of the Indian Penal Code should constitute a man an "habitual" for the purposes of that system. Further than this, however, he would not go in defining "habitual."

4. The Chief Commissioner understands that the special measures referred to in the concluding portion of paragraph 3 of your letter are provisions in the order of release restricting the liberty of the convict to go beyond certain local limits without a previous report of his intention to do so. If this be so, he thinks that such provisions may with advantage be adopted in the case of persons under surveillance.

5. In regard to the proposals for the prevention of systematic or wholesale arson and cattle-poisoning, I am to say that while, no doubt, theoretically defensible in the circumstances set forth in your letter, there is, in these Provinces at least, no sufficient justification for their enforcement; and the Chief Commissioner, herein agreeing with the great majority of his officers, does not recommend the adoption of them. But if for reasons which do not operate in the Central Provinces the Government of India decide to legalize a system of retributory compensation, then I am to say that in Mr. MacDonnell's opinion the law ought to run on the lines of Section 15 of the Police Act, *i.e.*, it should only operate if specially extended to any tract by the Local Government after the latter is satisfied that a general conspiracy of the sort suggested does really exist.

6 The Chief Commissioner, herein also agreeing with the great majority of his officers, supports the suggestion made by the Madras High Court that (with a view of securing the adequate punishment of habitual offenders) in cases which become cognizable by the Court

of Sessions merely because the offender has been previously convicted and seems to be an habitual criminal, the Magistrate should be empowered to refer the case to the Sessions Court for sentence.

7. In conclusion, I am to say, with reference to paragraph 5 of your letter, that quarterly returns of punishments awarded by the Courts to old offenders are already submitted by the Inspector General of Police for the information and orders of the Judicial Commissioner. The Judicial Commissioner will now be consulted as to the further action to be taken in connection with the remarks made in this portion of your letter.

Abstract of opinion of officers consulted on the provisions of the Punjab Government Draft Bill for the surveillance of habitual offenders, etc.

Designation of officer consulted.	Opinion.		
	On proposals for surveillance.	On proposals for prevention of cattle-poisoning and arson.	On proposal for reference to the Sessions Court for enhanced sentence.
Judicial Commissioner	Approves of Punjab Government's proposals.	No such provision required in these Provinces.	Approves, but does not consider it very necessary, as Deputy Commissioners in the Central Provinces are generally invested with powers under Section 30, Criminal Procedure Code.
Inspector General of Police and Prisons	Ditto .	None given . . .	None given.
Commissioner, Jubbulpur Division.	Ditto .	Such a provision not called for.	Approves.
Commissioner, Chattisgarh Division.	Approves of Punjab Government's proposals. but points out necessity for careful supervision of Police action.	None given . . .	None given.
Commissioner, Nerbudda Division.	Ditto .	Approves, but does not think the necessity is great in these Provinces.	None given.
Commissioner, Nagpur Division.	Ditto . . .	Does not approve.	An excellent proposal.
Deputy Commissioner, Seoni.	Objects to a roll-call and inspection of residences of persons under surveillance.	Such a provision not called for.	Approves.
Deputy Commissioner, Mandla.	Approves . . .	Would amend Section 15 of Act V of 1861, so as to meet cases of systematic arson or cattle-poisoning.	Ditto.
Deputy Commissioner, Jubbulpore.	Ditto . . .	Hardly necessary . .	Approves, and suggests that previous conviction cases might also be referred by Subordinate Magistrates to District Magistrates for enhanced sentence.
Deputy Commissioner, Damoh.	Objects to Police surveillance, and thinks transportation better.	Would amend Section 15 of Act V of 1861, so as to meet cases of systematic arson and cattle-poisoning.	Approves.

Designation of officers consulted.	Opinion.		
	On proposals for surveillance.	On proposals for prevention of cattle-poisoning and arson.	On proposal for reference to the Sessions Court for enhanced sentence.
Deputy Commissioner, Saugor.	Approves . . .	Hardly needed in these Provinces.	Approves, and suggests that such cases might also be referred to District Magistrates having powers under Section 30, Criminal Procedure Code.
Deputy Commissioner, Sambalpur.	Ditto	No such provision required.	Does not approve, as where it is proposed to inflict a heavy sentence, accused should be protected by regular committal and Sessions trial.
Deputy Commissioner, Bilaspur.	Ditto	Not necessary . .	Approves, and would have all persons once previously convicted under Chapter XII or XVII tried only by 1st Class Magistrates, and all twice previously convicted referred to Sessions Court.
Deputy Commissioner, Hoshangabad.	None given . .	None given . . .	Approves.
Deputy Commissioner, Betul.	Approves . . .	Unnecessary . .	Ditto.
Deputy Commissioner, Narsinghpur.	Expresses general approval.		
Deputy Commissioner, Chhindwara.	Ditto	Unnecessary . .	Not clearly stated.
Deputy Commissioner, Wardha.	Ditto . . .	Excellent if carefully worked, but very rarely needed in these Provinces.	Approves, and would allow reference also to District Magistrates empowered under Section 30, Criminal Procedure Code.
Deputy Commissioner, Balaghat.	Approves, but would restrict powers to Magistrates with 1st class powers or specially empowered.	None given . .	None given.
Deputy Commissioner, Chanda.	Approves . . .	Assessment of damages should be made not only with regard to "means" but "other circumstances" also.	Ditto.

BURMA.

From D. H. R. Twomey, Esq., Offg. Secretary to the Chief Commissioner, Burma, to the Secretary to the Government of India, Home Department,—No. 454-94C., dated the 9th December 1890.

I am directed to solicit a reference to your letter No. 1-423, dated the 31st May 1890, concerning the desirability of more stringent regulations for the control of habitual offenders in India. In that letter the Government of India invited an expression of the Chief Commissioner's views on the provisions of the draft Bill submitted by the Government of the Punjab for the surveillance of habitual offenders and for the prevention of special acts of mischief. The Chief Commissioner's opinion was also sought concerning the proposal of the Madras High Court that in the case of habitual criminals Magistrates should be empowered to enter a conviction and send the prisoner to the Sessions Court for an adequate sentence.

2. The Chief Commissioner caused your letter and its enclosures to be circulated to the more experienced officers in this province for an expression of their views on the points noted above, and the replies of these officers are annexed to this letter. It will be seen that there is

a general consensus of opinion in support of the proposed system of surveillance and the amendment of the Code of Criminal Procedure in the manner suggested by the Madras High Court.

3. In taking action with the purpose of dealing more effectively with the criminal classes, there are two objects to be aimed at—

(i) the control of the criminal classes in the country;

(ii) the removal of habitual and incorrigible offenders from the country.

As regards the first of these objects the Chief Commissioner approves generally of the proposals of the Punjab Government.

There can, in his opinion, be no doubt that by the action of various causes the power of the Magistrates and police has become insufficient for the control of the worst criminals. In their attempt to exercise this control the executive officers fail, firstly, because they get no assistance from the honest portion of the population in discovering those who habitually live by dishonest means; and, secondly, because they have not sufficient power to deal with persons whose bad character is known. These two causes are connected with each other more closely than may at first sight be apparent. In order to secure to the officers of the Government more assistance from the people, it is, in the Chief Commissioner's opinion, necessary to add somewhat to the obligations placed upon village headmen, landowners, and others by Section 45 of the Code of Criminal Procedure, 1882. Section 10 of the draft Bill forwarded with your letter makes it incumbent on the village headman, or other village official, to report the movements of persons who are under surveillance. Sir Charles Crosthwaite considers that this is not enough, and that village headmen and others should in addition be bound to report to the police the names of all persons resident in their villages who have no honest means of livelihood, or whose expenditure is clearly in excess of their ostensible means of subsistence. They should also be bound to report the name and place of origin, and the occupation of every new-comer to the village.

When a man of bad character has become known it has next to be considered how he should be dealt with? It is beyond question that the provisions of Sections 109 and 110 of the Code of Criminal Procedure are insufficient. Under Section 109 a man may evade the provisions of the law by having ostensible means of subsistence in the shape of a trade which he occasionally exercises, or a small patch of land which he or a member of his family may cultivate. Section 110 is almost useless. It has been held under this section that it is insufficient to prove a man's antecedents unless there is evidence to show that he has done some act or resumed avocations that indicate on his part an intention to return to his former course of life and to pursue a career of preying upon the community. As this is the interpretation placed on the present law, it would, in Sir Charles Crosthwaite's opinion, be advisable to alter it so as to restore the powers which Sections 505 and 506 of the Criminal Procedure Code of 1872 gave to the Magistrates of demanding security from persons of notoriously bad livelihood or of a dangerous character, and to add the powers of surveillance or of substituting surveillance for imprisonment when security is not given, as the Government of the Punjab recommend. But no change in the law in any of the directions indicated will have much effect unless the orders of the Magistrates are preserved from the interference of the High Courts, who have no responsibility for the maintenance of order, and cannot look beyond the technicalities of the law or the record before them. The villagers cannot be expected to give information unless they have some security against the vengeance of the person accused. At present they have no such security. It is true that there is no appeal from the orders of Magistrates under Sections 109 and 110, but this does not bar the revisionary powers of the High Court.

The actions of the police and Magistrates in working the preventive sections of the Code have an executive rather than a judicial character, and Sir Charles Crosthwaite would recommend that orders under these sections should be freed from the interference of the Criminal Courts of appeal or revision. The Magistrate, in respect of these matters, should be under the control of his executive superior, the Commissioner of the Division. It might be possible to decide cases of this kind by means of a jury or punchayet of village elders, whose decision regarding the notoriety of the accused's character might be accepted as sufficient evidence to justify a Magistrate in demanding security. It may be said that many bad characters live in towns to which the provisions of Section 45 of the Code of Criminal Procedure do not apply. This difficulty might be overcome by dividing towns into suitable wards and appointing headmen or aldermen to each ward. This plan has been tried with great success both in Mandalay and Rangoon, and in Indian towns also it would probably be found of great assistance to the police. It would be necessary to place the system on a legal basis, and to confer certain powers and privileges of office on the headmen of wards.

4. Turning now to the second question, namely, the removal of habitual offenders from the country, the Chief Commissioner agrees with what Mr. Lyall and Surgeon-Major Lethbridge have advanced on this point. There is no hope of reforming such characters in our jails. Too frequently the sentences passed on second and even subsequent convictions are far from deterrent, and do not remove the criminal from his surroundings for a period sufficiently long to break up his evil associations. Moreover, it is exceedingly difficult for a man who has been two or three times in jail to procure employment of any settled nature. There is no doubt that such criminals ought to be transported. The Chief Commissioner is also entirely in favour of the proposal made by the Madras High Court. The present system of double trials is responsible for a good deal of the weakness felt by the executive authority and for many of the failures of justice which take place. In cases of petty theft, where the accused is an habitual offender, complainants will not prosecute if they know that the case will have to go to a Sessions Court, and the Magistrates also are disinclined to put the Sessions Courts to the trouble of trying cases of a very petty character merely because a long sentence is demanded.

The Chief Commissioner is inclined to think that something more is necessary than the alteration in the Procedure Code recommended by the Madras Court. Even the highest appellate authorities differ in their treatment of such cases, and some Judges will always look more to the offence for which the prisoner is being tried than to the prisoner's antecedents. The Chief Commissioner would recommend therefore that when a criminal is found to be a "habitual" a sentence of transportation should be made compulsory. Hard cases could easily be submitted by the Judges to the Executive Government for a reduction of the legal sentence.

5. In connection with the subject of this correspondence, I am to add that the prosecution in criminal cases is frequently at a disadvantage when the prisoner is defended by counsel and the Crown is either unrepresented or represented only by an inferior local pleader. Sir Charles Crosthwaite's view is that a Judge or Magistrate in this country ought to be independent of all assistance from the Bar. He ought to be much more than a mere Court which sits to hear and pass judgment on the evidence and arguments placed before it. He ought to be an earnest and impartial searcher after truth, going into the very origin of the case, and noting everything which may favour either the prosecution or the defence. Circumstances, however, are no doubt turning the Magistrate and Judge more and more away from this view of their duty. There are Magistrates who will discharge or acquit a prisoner because the police have failed to produce evidence on a particular point without making any attempt to get the defect remedied. Few Magistrates in Burma have had any practical experience in police work, and less attention is paid now than formerly to the duty of examining the police diaries and fully understanding the origin of the case, and the way in which it has been worked out. The facilities of communication given by railways enable criminals to procure professional assistance for their defence much more readily than used to be the case. Here in Burma it is certainly true that the presence of a lawyer for the defence is looked upon by the Magistrates as a reason for asking that similar assistance should be given to the prosecution. The Chief Commissioner considers that it may become necessary to make better provision for the prosecution of cases of importance. It is perhaps even more important to provide for the representation of the Crown in appeal cases, for Appellate Courts are sometimes apt, when the Crown is not represented, to yield too easily and without sufficiently weighing every point in the case to the arguments used by the prisoner's Counsel.

From Major B. A. N. PARROTT, Deputy Commissioner, Thongwa, to the Under-Secretary to the Chief Commissioner, Burma,—No. 560, dated the 17th July 1890.

In reply to your letter, Judicial Department, No. 248-94C., dated the 9th July 1890, I have the honour to submit the following remarks.

1. *Paragraph 2. Preventive section of the Criminal Procedure Code.*—I am strongly of opinion that the words "or is a person of notoriously bad livelihood or of a dangerous character" should be added to Section 110, Criminal Procedure Code.

There are many persons who receive bad characters, thieves, etc., and put them up to thieving, etc. These men cannot at present come under Section 110.

As the accused can appeal under Section 118 in most cases, I do not think there is any chance of the provisions of the section being abused.

I also think the rules here regarding the prosecution in such cases being sanctioned by a Magistrate should be cancelled.

2. I am inclined to think that the provisions of Section 75 are generally acted up to by the Lower Courts, but it is the higher Courts that interfere with such sentences. If the

Judges of the higher Courts were men who had had long district experience, I think there would be less quibbling and a more rigorous application of the provisions of Section 75.

Paragraph 3. Register of suspects.—I see no reason to object to a secret register of suspected persons to be kept by the police. Any good police officer would naturally keep one for his own information.

Paragraph 4. Levying of compensation from inhabitants of a locality for losses caused by mischief, etc.—A provision somewhat like the one proposed exists in Burma in the Village Regulation, and as far as I know has worked well.

Paragraph 5. Transportation for habitual offenders, Section 75, Indian Penal Code.—I think the idea a very good one and would have good results.

Paragraph 6. Power to send up accused to Sessions for enhanced punishment.—The proposition to allow Magistrates to try cases and submit proceedings for enhanced punishment to Sessions Court is excellent, and would lead to very good results. I see nothing to urge against it.

From MAJOR G. S. EYRE, Deputy Commissioner, Lower Chindwin, to the Under Secretary to the Chief Commissioner, Burma,—No. 371, dated the 17th July 1890.

In reply to your letter, Judicial Department, No. 253-94C., dated the 9th July 1890, I have the honour to forward an expression of my opinion on the points raised.

OPINION.

Paragraph 6.—I consider the prop osed amendment to the Criminal Procedure Code permitting Magistrates to convict habitual offenders and refer the proceedings for sentence to the Sessions Judge would be a most useful provision. It would save the time of the Sessions Judge and save the complainant and witnesses the money and expense of attendance at Court of Sessions.

I should suggest that in cases in which the accused pleaded guilty before the Lower Court, they should not have the option of a committal and trial by jury, but should be sent up for higher punishment forthwith.

DRAFT BILL.

Habitual Offenders Surveillance Act, 1889.

Section 2.—In the definition of habitual offenders I would include persons who have on two or more occasions been convicted of offences under Chapters XII and XVII, Indian Penal Code, whether such offenders are liable to enhanced sentence under Section 75, Indian Penal Code, or not, provided that the offences were punishable with three years' rigorous imprisonment or more.

This would enable a man who had committed several offences before he was found out to be dealt with as an habitual. As the draft stands, to be an habitual he would require to have been sentenced, or to have been liable to have been sentenced, to enhanced punishment under Section 75. Under numerous High Court Rulings it has been held that Section 75 cannot apply unless accused has undergone some punishment between the dates of the commission of his various offences.

I consider that a man who has successfully evaded discovery for some time, several of whose offences subsequently come to light, may well be regarded as an habitual, though not liable to enhanced punishment under Section 75, Indian Penal Code.

Section 4.—I would suggest an addition here to Sections 109 and 110, Criminal Procedure Code, enabling the Magistrate to add to the terms of the security bond a condition that the person placed on security should reside in a given locality and should not depart therefrom without the Magistrate's permission; and such person should, on changing his residence, be required to report himself to the Magistrate of the place to which he removes.

Section 7, sub-section 1.—I would suggest (*a*) authority being given to maintain a register of persons from whom security has been required under Sections 109 and 110, Criminal Procedure Code; and (*b*) that the police be authorized to keep a private register of suspected persons. This is, I believe, done everywhere, and it should be legalized.

Sub-section 2.—I would apply this provision to persons on security under Sections 109 and 110.

Section 8.—I consider the whipping provision likely to have a very deterrent effect. Should it not be retained, it is probable that the number of persons sentenced to imprisonment under this section would be very great.

Section 12.—I consider this provision most necessary. Until villagers are made to suffer for apathy in reporting crime, or for failure to assist in the detection of it, the police are work

ing under serious difficulties. Offences of the class proposed to be legislated for are most difficult of detection, as individuals are afraid to give any information they may possess about the commission of them.

They may well be held liable for preventable damage done under these circumstances. Cattle-theft in Upper Burma is controlled by rigorous exaction of compensation from the villagers in whose local limits the track is lost; and I consider that villagers should certainly be collectively held liable for damage caused by such serious crimes as arson and cattle-poisoning. The remaining sections of the Act do not appear to call for comment.

From F. W. R. FRYER, Esq., C.S.I., Financial Commissioner, Burma, to the Under-Secretary to the Chief Commissioner, Burma,—No. 516-70N., dated the 21st July 1890.

In reply to your No. 238-94C., dated the 9th July 1890, asking for an expression of my opinion on certain points raised in the Officiating Secretary to the Government of India's No. 1-423, dated the 31st May last, on the subject of more stringent regulations for the control of habitual offenders in India, I have the honour to say that the following appear to me to be amongst the measures which should be taken in order to strengthen the hands of the police in dealing with crime by habitual criminals:

(1) The power of demanding security from persons of notoriously bad livelihood or of a dangerous character, as it existed in the Criminal Procedure Code of 1872, should be restored to Magistrates.

(2) In order to meet the danger which persons who come forward to give evidence against persons charged with being habitual offenders, or of notoriously bad livelihood or of dangerous character, incur, I would suggest that Magistrates should take up cases under these sections, and should inquire into them in the villages in which the persons charged reside. When I was a District Magistrate I used to take the District Superintendent of Police with me when I went on tour. I used to require the District Superintendent of Police to prepare a list of the persons from whom he considered that security should be taken under Section 110, and, if I agreed that it was necessary to require any persons to show cause under that section, I used to record the information upon the spot and then proceed at once under Section 117.

(3) The great danger to persons giving information arises, I think, when the term for which security is demanded expires, as the persons called upon to give security will often endeavour to be revenged upon those who give information against them when they are released and return to their villages. The only suggestion which I can make to meet this danger is police surveillance over bad characters after the term for which they have been placed on security has expired. For this purpose a secret register of bad characters is essential, and domiciliary visits should be paid to them as suggested in paragraph 3 of the Secretary to the Government of India's letter. I do not think that the friends or relations of bad characters usually revenge themselves on persons who give information against them whilst the bad characters are on security, and, if bad characters are placed under police surveillance when discharged from security, their power of retaliating upon those who have informed against them will be much curtailed.

(4) As regards the enforcement of the provisions of Section 75 of the Indian Penal Code, I think that cases in which insufficient sentences have been passed should be scrutinized by Courts of Session and District Magistrates, and, if necessary, forwarded for revision under Section 438 of the Code, and also that the Local Government should be empowered to direct an appeal when inadequate sentences have been passed upon habitual offenders. The recommendations of the Madras High Court, as stated in paragraph 6 of the Secretary to the Government of India's letter, also seem to me worthy of adoption.

(5) With regard to paragraph 4 of Mr. Lyall's letter, the sections of the Bill framed by the Punjab Government which apply to the surveillance of habitual offenders seem to me very appropriate. Section 12, which refers to the prevention of special acts of mischief, such as cattle-poisoning and arson, should of course not be generally applied, but they are necessary in certain districts, such as Rawal Pindi and Hazara in the Punjab. When I was Deputy Commissioner of Hazara cases of arson and cattle-poisoning were of constant occurrence, and I stopped them almost entirely by applying the sections of the Frontier Regulations, which enabled me to levy compensation from the inhabitants of localities in which such acts of mischief occurred, and I found that when it was generally known that the inhabitants of a village would have to pay compensation for such offences if offenders were not given up, they frequently gave them up unless they could afford to pay the compensation, in which case the

punishment reached the right persons. As there was no law under which such compensation could be levied in the adjoining District of Rawal Pindi, it was found very difficult to deal with such acts of mischief. Special legislation to meet such special cases of mischief is probably not required except in a few districts of India, and I would not, therefore, recommend that Section 12 of the Punjab Bill should be included in any general Act. They should be separately dealt with in a local Act to be applied only to certain districts. Such crimes are not, so far as I am aware, common in Burma.

From D. NORTON, Esq., Deputy Commissioner, Rangoon Town Lands, to the Secretary to the Chief Commissioner, Burma,—No. 55-13—94, dated the 31st July 1890.

I have the honour to submit the report called for in your Judicial Department No. 250-94C., dated the 9th July 1890, on the subject of more stringent regulations for the control of habitual offenders in India.

2. With reference to the question of preventing special offences by levying compensation from the inhabitants of the localities concerned, I do not think that we in Burma can want any powers in excess of those given to Deputy Commissioners of districts by the provisions of Section 14 of Act III of 1889 (Lower Burma Villages) and of Section 9 of Regulation XIV of 1887 (Upper Burma Villages). The powers conferred by these sections for punishing villages accessory to crime seem to me ample.

3. Regarding the second point on which I am asked to express my opinion, the time has, I believe, arrived for placing upon a legal footing the surveillance of bad characters. For various reasons the preventive sections of the Code of Criminal Procedure do not now work satisfactorily. On the one hand, the police look askance on any one who becomes security for an habitual offender, and, on the other hand, bad characters and their associates are able to do much to dishonour respectable men, who may dare to give evidence against them. The average subordinate police officer and his witnesses desire to have the bad character locked up, out of harm's way, even for six months, and they consequently regard the person who offers security as against them and in league with their defendant. Again, respectable men do not like our Courts, and shrink from the ordeal of cross-examination, during which it is often impossible to prevent habitual criminals from asking insulting questions. Apart from the failure of the preventive sections of the Criminal Code to do all that has been expected of them, it requires, I think, no arguments to prove that, without proper supervision over bad characters in their homes, offences can neither be prevented nor detected. There is not, nor can there be, a good police officer who does not know something of the mode of life and movements of the men in his jurisdiction who are the most likely to commit crime. Both the regular and the rural police in the districts in which I have served have been in the habit of visiting bad characters at their villages, and this necessary practice should now be legalized. Further, any person placed under police surveillance should not only be subject to domiciliary visits, but should also be bound to reside in a particular locality, or within fixed limits, unless permitted to leave by proper authority on specific conditions. And District and Sub-divisional Magistrates should, I think, be empowered to place, not only habitual criminals, but also persons of notoriously bad livelihood and of a dangerous character, under the surveillance of the rural and regular police. Bad characters in Burma might be placed under the supervision of the headmen of their villages.

4. With regard to the opinion expressed in the enclosures to your letter on the subject of the working of Section 75 of the Indian Penal Code, there can be no doubt that, despite revision and inspection, subordinate Courts presided over by young and inexperienced officers do deal, and will continue to the end of time to deal, inadequately with habitual offenders. It should not be necessary to commit an habitual criminal to the Court of Sessions at all merely because he is an habitual, in order that he may receive the enhanced penalty properly provided by law for him. Such commitments, often of the very simplest cases sent up by the police, not only waste the time of Judges, jurors, prosecutors, and witnesses unnecessarily, but they also cause old offenders to enjoy comparative immunity from prosecutions for petty offences against property. Complainants and witnesses have in most districts a horror of Sessions cases, while some habitual criminals rather enjoy trial by jury. District Magistrates and Magistrates especially empowered in that behalf by Local Governments, should, I think, be authorized to inflict sentences of transportation for life in the cases of persons habitually guilty of offences against property. This object could be attained either by amending Sections 30 and 34 of the Code of Criminal Procedure, or in the manner suggested by the Madras High Court,

From W. E. WARD, Esq., C. S. I., Judicial Commissioner, Lower Burma, to the Secretary to the Chief Commissioner, Burma,—No. 1114-2, dated the 12th August 1890.

IN reply to your letter No. 239-34C., dated the 9th July 1890, I have the honour to communicate the following observations on the proposals of the Government of India in reference to habitual criminals.

2. In regard to Section 75 of the Indian Penal Code, I am aware that in Bengal that section is not given effect to by the majority of Criminal Courts, but I doubt if in any province in India that section has been so prominently brought to the notice of all Magistrates and Sessions Judges as it has been in Burma by the Judicial Commissioner. For many years past the circulars of this Court have drawn the attention of all Criminal Courts to the necessity of dealing severely with habituals, and the effect of those circulars has been rather to cause Magistrates and Sessions Judges to pass unduly heavy sentences on this class of criminals than to deal with them too leniently.

3. Referring to the proposal of the Madras High Court to render it competent to a Magistrate to take cognizance of certain cases, of which only Sessions Courts can now take cognizance by reason of the accused being an habitual, I would certainly recommend its adoption, though it would have little effect in reducing the work of Sessions Courts in a province like this, where all District Magistrates are vested with special powers under Section 30, Code of Criminal Procedure, and therefore in most cases can effectually deal with habituals without committing to the Sessions Court.

4. In regard to the surveillance of habituals, the Chief Commissioner is aware that every year a register of convictions of the year in heinous cases is drawn up and printed under the supervision of this Court for each Commissioner's division (*see* Judicial Commissioner's Circulars 25 of 1887 and 11 of 1890, copies appended). In this register is shown what convicts convicted during the year have been previously convicted. A copy of this register is sent to every Deputy Commissioner, Sub-divisional Officer, Township Officer, and District Superintendent of Police. Each register has an index from which it can easily be ascertained if any particular convict has been previously convicted. The register is in fact called the "Previous Conviction Register," not because it refers only to habituals, but because the names of habituals and the localities where they reside can be ascertained from it. If it is considered desirable to have a separate register of habituals as defined in the Punjab Bill, such a register could easily be prepared for each district, sub-division, and township from this Previous Conviction Register.

5. I also think that an Act legalizing the surveillance of habituals is desirable and necessary. The provisions of the Code of Criminal Procedure regarding the taking of security from bad characters are certainly inadequate and, moreover, are often harshly applied. I have recently had a number of these cases under my notice, in which the police have reported to the Magistrate that certain parties have no ostensible means of livelihood, and yet, when these are summoned by the Magistrate to show cause why they should not give security, the evidence adduced by the police is found to be of so vague and general a character that the accused are in a very large number of cases discharged. All this means unnecessary harassment of the parties accused and witnesses. The standing orders are that such cases should be enquired into on the spot and in the villages where the accused and witnesses reside; but these orders cannot often be followed. Under the circumstances I would infinitely prefer to see a system of surveillance established over habituals substituted for the present one of calling upon habituals or previous convicts to show what are their means of livelihood. Under a system of surveillance a previous convict may have a chance of returning to an honest life; under the present system he has little chance, for he knows that the police are always after him and ready to report him, and that as soon as he is out of jail the Magistrate may call upon him to show cause why he should not go back there again. These remarks, I may observe, are not based upon any theoretical view of what the police or the Magistrate might do under the provisions of the Code of Criminal Procedure, but upon cases which have actually come under my observation here in Burma.

6. Then, again, the difficulty referred to by the Punjab Government in getting witnesses to come forward and give evidence against persons having no ostensible means of livelihood exists in Burma as in other provinces in India, so that the security provisions of the Code of Criminal Procedure cannot be given effect to even when the accused has really no ostensible means of livelihood.

7. On these considerations I approve generally of the 7th section of the Punjab Bill, which sets forth in general terms in what manner surveillance might be exercised. It is only necessary to see that the rules framed under that or some similar section are so framed that the police will not be able, under colour of them, to harass an habitual unnecessarily. I am not

much in favour of a periodical roll-call of habituals. I think that might be dispensed with. The police ought to be able to find out for themselves whether an habitual has left his village or the local limits to which he is confined, and in such cases might report to the Township Officer or Sub-divisional Magistrate, who would summon the absentee to account for his movements, and would punish him for leaving the prescribed limits without permission. In any case, if a periodical roll-call is considered necessary, the call should be before the Magistrate and not the police. I doubt if the police could be trusted to record truly the presence of every habitual that appeared at a roll-call at which a Magistrate was not present.

8. I am also in favour of the principle laid down in Section 12 of the Punjab Bill as to holding the inhabitants of certain tracts responsible for offences of a particular class committed within those tracts in all cases where it is shown that they are keeping back information which might lead to the detection of offenders. The principle of this section might, I think, well be extended to cases of cattle-theft, a class of crime so common in this country, and which, as I have shown in my last two annual reports on criminal justice, has been steadily increasing for some years past. The superior Courts might be trusted to see that Magistrates did not in such cases abuse the law, and convict and punish on insufficient evidence.

From Brigadier-General E. STEDMAN, C.B., Inspector-General of Police, Burma, to the Secretary to the Chief Commissioner, Burma,—No. 4759-151M., dated the 12th August 1890.

With reference to your letter, Judicial Department, No. 244-94C., dated the 9th ultimo, forwarding for opinion copy of Government of India letter, Home Department, No. 1-423, dated the 31st May 1890, I have the honour to inform you that the draft Bill prepared by the Punjab Government, both as regards the surveillance of professional criminals and the proposed action with regard to special acts of mischief, appears suitable.

From J. K. MACRAE, Esq., Deputy Commissioner, Hanthawaddy, to the Under-Secretary to the Chief Commissioner, Burma,—No. 384, dated the 23rd August 1890.

In reply to your letter No. 249-94C., dated the 9th July 1890, I have the honour to submit the following remarks.

This and the adjoining districts are at present overrun with men from Upper Burma, who have no fixed place of abode, but shift about, being employed perhaps as ploughman in one district, harvester in another, or cooly in a Rangoon rice-mill. In this way the bad characters among them not only become mutually acquainted, but acquire an extensive local knowledge, which they turn to account in the commission of dacoity and cattle-theft. Besides these there are the local bad characters, sons of respectable parents, who have fallen into habits of crime through idleness, aversion to work, the opium-pipe, and the gaming-table.

The members of the latter class are well known to the police as habitual criminals, but the former often escape detection by betaking themselves after the commission of a crime in one district to some other district where they are equally at home.

Section 11 of the Lower Burma Village Act is intended to establish some check over these migrants, but hardly goes far enough.

2. With regard to the matters discussed in the second paragraph of Mr. Lyall's letter, I am of opinion that the language of Section 110 of the Criminal Procedure Code as it stands is sufficiently comprehensive.

It is the public inquiry, enjoined under Section 117, that is objectionable from the point of view we are considering, as no one cares to incur the special enmity of the bad character by publicly denouncing him.

It would be quite sufficient, in my opinion, for the Magistrate to satisfy himself, recording the grounds of his opinion, and let the accused show cause why he should not give security.

The examination of the accused person and of his witnesses should be sufficient to satisfy a Magistrate as to the necessity for requiring security.

3. In regard to the third paragraph of the letter, the proposal to subject bad characters (including persons ordered to find security for their good behaviour, but unable to do so) to a long period of police surveillance is well worthy of a trial as a reformatory measure. My experience is that the Burman habitual criminal is under the present system incorrigible, but a system of close police surveillance may extinguish his predatory habits or instincts in time.

4. With regard to the fourth paragraph, any acts of mischief of the kind specified which have come within my experience have been the result of personal spite or private revenge. No widespread conspiracy to commit outrages for the coercion or punishment of any particular classes of the community has ever existed here to my knowledge.

The nearest approach to such a thing is the propensity at times indulged in by some wretched opium-smoker to set a match to the rick or barn of his more prosperous neighbour In such a case it might be expedient to make the community share the loss.

5. With reference to Sections 5 and 6, there is no doubt that transportation for life is the best thing for an incurable habitual criminal, and I agree with the Madras High Court in thinking that a Magistrate trying a habitual criminal of an offence cognizable by such Magistrate should be empowered to refer the case to the Court of Sessions for sentence, in the way that is now done by an inferior Magistrate under Section 349 of the Criminal Procedure Code; but I differ from it in the last proposal, namely, that the accused should be given the option of a committal for a trial before the Sessions. The object of the amendment is to save the great hardship to the witnesses in cases of petty theft and the like of having to attend the Sessions simply because the accused is an old offender, and this would be defeated by the tender of such option. A sufficient safeguard would be provided if the power of reference were restricted to Magistrates specially invested under Section 30, the sentence being of course subject to appeal.

From G. J. S. HODGKINSON, Esq., C. S. I., Judicial Commissioner, Upper Burma, to the Secretary to the Chief Commissioner, Burma,—No. 108-2—11, dated the 25th August 1890.

In reply to your No. 240-94C., dated the 9th July 1890, I have the honour to state that the proposals made to provide for the surveillance of habitual offenders have my entire concurrence. It is most necessary that there should be a register containing the names of at least the more notorious criminals in a district, and, if they are to be kept from crime, surveillance must be exercised over them by the police, and especially the village police. I can speak from experience of the good effect produced by surveillance of a kind far less thorough than the Bill provides for, which was carried out in the Murshidadad District when I was Magistrate there in 1877-78, under the immediate supervision of the District Superintendent of Police, Mr. Stock (now Deputy Inspector General of Police, Bengal). A limited number of the worst characters in each thana were selected, and their names were entered with a distinguishing mark in the thana register of bad characters. The chowkidars of the village where they lived were questioned and required to give a report on their weekly calls at the thana regarding such of these persons as lived within their beats. Every police officer who visited a village in which any of these persons lived in the course of his duties was required to see if they were at home and how they were living. Moreover, a special police officer was deputed at irregular intervals to see if these persons were or were not in their houses at night. Any absence from the village at once attracted attention, and many crimes, especially burglaries, were brought to light from the suspicion which attached itself to these persons from their being away from home without notice.

2. It would be a great advantage to have legal sanction for measures obviously necessary to the extension and organization of this scheme which was necessarily imperfect. The proposed Bill supplies all that appears to be necessary, save the rules under Section 7, which will vary according to the special circumstances of different districts. I am not, however, sure that the answering at a roll-call (Sections 7—5) is necessary or advisable.

3. I have more hesitation in assenting to the provisions of Section 12 of the Bill for the prevention of special acts of mischief, such as cattle-poisoning and arson. It appears hard to hold residents of a community pecuniarily liable for these acts if they have no power to prevent the settlement in that community of persons who are suspected of being given to such offences, or unless there is reason to believe they are all tarred with the same brush. I would restrict the power given in the section to cases in which it appeared there was reason to believe that the residents could, if they would, prevent these outrages. With this restriction I think the power may be useful where these outrages are prevalent.

4. The adoption of the suggestion referred to in Section 6 of the Government of India's letter commends itself to me as likely to be most useful. I would not limit it in the manner suggested by the High Court of Madras.

From D. G. MACLEOD, Esq., Judge of Moulmein, to the Secretary to the Chief Commissioner, Burma,—No. 142, dated the 25th August 1890.

In reply to your letter No. 243-94C., Judicial Department, dated the 9th ultimo, I have the honour to offer the following remarks on the subject of the correspondence forwarded to me with that letter, and in doing so I have borne in mind that only a general opinion upon the principles of the proposals put forward is sought.

2. The subject of making more stringent regulations for dealing with habitual offenders is one that is fraught with much difficulty, for while, on the one hand, it is necessary that society should be protected from the depredations of incorrigible criminals, on the other it is equally necessary to discriminate between offenders who are deserving, by reason of their inveterately bad habits, of the most stringent treatment, and those who might be reclaimed by slighter or more appropriate punishment.

3. The reasons for the belief of the Government of India as to the failure of the provisions of the Criminal Procedure Code to operate as a control over habitual criminals are undoubtedly true, and my experience has also shown that Magistrates deal far too leniently with offenders charged with previous convictions. Hence it is certainly necessary in all these cases that some measures should be taken to remedy existing defects.

4. I have found that the police are only too ready to prosecute men who have been previously convicted, either with the view of saving themselves possible trouble regarding them, or in order to prevent them from committing further crimes; and thus there must already be *some* form of supervision over suspected bad characters; but the subject should not be looked at entirely from the point of view of the police, although no doubt all reasonable assistance should be afforded them in dealing with the criminal classes; and certainly, if police surveillance is considered to be the best method of dealing with criminals and suspected persons, it should be placed upon a legal footing.

5. The Government of India very wisely considers the maintenance of *public* registers and the system of roll-calls of suspected persons both open to objection and likely to be ineffectual, but seems disposed to sanction the maintenance of secret registers and a system of domiciliary visits *for certain purposes;* and if these measures could be expected to have no other effect than of preventing the commission of crime, the Judges, I am sure, would readily approve of them; but there is reason to fear under present conditions that in the hands of venal or ignorant policemen the secret register and domiciliary visits, especially as regards mere suspects, might become an engine of oppression. Therefore, while I am in favour of some enactment for the more effectual supervision and control of habitual offenders and suspected persons, I consider it necessary that every safeguard should be provided against the abovementioned evil.

6. If the end in view is to reform habitual criminals as well as to prevent the commission of further crime by them, I think it would be well to bring about the more frequent transportation of habituals, which could be done by a careful system of apportioning punishment in the case of such offenders As a means to this end I am of opinion that either Sessions Courts alone should be left to try cases in which enhanced punishment under Section 75, Indian Penal Code, is necessary, or that the passing of sentence in such cases should be left exclusively to those Courts; and I would suggest that well-defined rules should be made for the guidance of those Courts in awarding punishment.

As regards the prevention of special acts of mischief by levying compensation from the inhabitants of the locality in which the mischief is committed, I am of opinion that such a procedure should only be allowed in extreme cases and subject to the most careful regulations.

From H. ADAMSON, Esq., Deputy Commissioner, Mandalay, to the Secretary to the Chief Commissioner, Burma, —No. 987-187, dated the 27th August 1890.

In reply to your No. 251-94C., dated the 9th July 1890, I have the honour to state that I have no amendments to suggest on the draft Habitual Offenders Surveillance Act, but I think that its provisions, taken as it stands, would be of the very greatest assistance to Magistrates and police in Burma.

With reference to the concluding paragraph of Government of India, Home Department, letter No. 1-423, dated the 31st May 1890, I believe that in the heavier districts of Burma habitual thieves frequently are awarded too light a sentence because the District Magistrate has not time to try them with his extended powers. I think that in cases cognizable by the Court of Sessions merely because the offender has been previously convicted, the Magistrate should be empowered to enter a conviction and refer the case to the Sessions Judge, or District Magistrate with extended powers, for an adequate sentence.

From SURGEON P. W. DALZELL, Officiating Inspector General of Prisons, Burma, to the Secretary to the Chief Commissioner, Burma,—No. 6400-155, dated the 9th September 1890.

In reply to your Judicial Department letter No. 245-94C., dated the 9th July, I have the honour to state that in my opinion improved means of communication have greatly facilitated

the operations of criminals of the habitual class, and that the law as at present administered has proved inadequate in the detection, punishment, and repression of habitual offenders.

This is, no doubt, due in some degree to the absence of any special legislative measure involving a system of surveillance over habituals discharged from jail, but also, and more particularly, to the non-deterrent character of the punishments inflicted on them. By this I mean not only the failure of the Courts to award adequate punishments under the provisions of Section 75 of the Indian Penal Code, but also the manner in which sentences are carried out in jails.

Some system of domiciliary visitation and control over discharged habituals is probably necessary, and I have no doubt the provisions of the Bill will tend to prevent, or at any rate discourage, a return to criminal practices of habituals residing in districts within which the enforcement of the Act may be decided upon. But in determining the scope of any such enactment, various considerations will have to be weighed, and among these one of the first will be the question of the fitness of the agency to be employed in giving it effect. Has the police force of the province acquired that high degree of training and discipline, and has it the proper amount of cohesion and intelligence, that it would admit of its being entrusted with the exercise of such extended powers?

Habitual criminals have complained that on release from jail they have been so harassed and tyrannized by the police, and so held up to obloquy and suspicion, that they have been frustrated in their endeavours to earn an honest livelihood, and are thus driven into paths which lead them back into the comparative refuge of the jail.

These representations may be somewhat exaggerated, and such instances may not under existing conditions of the law be numerous, but it is easy to conceive how a man who has been the victim of circumstances in the commission of his first offence should, if subjected to such treatment, be driven to recklessness and desperation and become an irreclaimable breaker of the law.

It is quite clear that, if surveillance is to have the effect desired, it should be exercised temperately and with discretion, insuring the speedy conviction of the delinquent when he relapses into crime, and as far as possible preventing it, but while he endeavours to lead a reformed life interfering as little with him as possible.

Having regard, however, to the practical difficulties in the way, I am disposed to consider it a far more effective way of dealing with the class while they are inmates of the jail.

The fact must be freely admitted that our present system of jail discipline has no terrors for the habitual criminal. But little distinction is drawn between him and other classes of convicts. If his sentence is long enough he earns remission under the mark rules, and in due time gains promotion to a convict wardership. By good behaviour and diligence he can earn all other privileges and enjoy some authority and consideration. His life in jail therefore is not irksome, and possibly he considers it preferable to the precarious method of earning a livelihood outside under the eye of the police.

In order to remedy so un esirable a state of affairs I would suggest that accommodation be provided in our jails not only for the segregation of habituals, but for their separate confinement, and that the most irksome and laborious forms of employment be reserved for them. This, if approved of, would involve extra expense, as it would reduce the number of convicts available for warderships, and it would moreover tend to decrease the profits derived from remunerative forms of labour, but these must be looked upon as secondary considerations.

In conjunction with the above, the attention of Magistrates should be called to the provisions of Section 75, Indian Penal Code, so that full advantage may be taken of the power to award long sentences, and particularly sentences of transportation on convicts who come within the range of its operation. Experience has shown that the law on this point is much overlooked.

My recommendations therefore resolve themselves into this,—that, whether surveillance be adopted or not, the existing provisions of the law regarding habituals be rigidly enforced, and that jail discipline in respect of them be rendered much more deterrent and corrective.

If surveillance be considered practicable, it will probably be expedient to apply it in its entirety to the lower province, with the exception perhaps of clause 12, which is framed with a view to the suppression of such crimes as arson and cattle-poisoning,—crimes which I believe to be comparatively rare in the province.

In other parts of the province, in lieu of surveillance it will probably be quite sufficient to enforce strict attention to the existing orders contained in Chief Commissioner, Judicial Department, No. 587-702P., dated the 22nd October 1889, regarding the release of time-expired convicts of the special classes.

From J. E. BRIDGES, Esq., Officiating Deputy Commissioner, Bassein, to the Secretary to the Chief Commissioner, Burma,—No. 1374, dated the 9th September 1890.

I have the honour to acknowledge receipt of your letter No. 252-94 C, dated the 9th July, and to submit the following remarks.

I do not think that any provisions similar to those embodied in Section 12 of the Punjab Draft Bill are required in Burma. The only act of mischief commonly committed in Burma is cattle maiming, and this, according to my experience, only occurs in kwins, where gardens and paddy cultivation are mixed, and when the cultivators do not herd their cattle properly and prevent them destroying the young trees. The cases are comparatively rare, and would not call for special legislation.

The other provisions might, I think, be adopted with advantage in Burma, and the District Superintendent of Police concurs with me in this opinion.

From F. S. COPLESTON, Esq., Deputy Commissioner, Myingyan, to the Under-Secretary to the Chief Commissioner, Burma,—No. 1148-166, dated the 12th September 1890.

In reply to your letter, Judicial, No. 246-94C., dated the 9th July, I have the honour to report that in my opinion the proposed provisions for the surveillance of habitual offenders are desirable and likely to be useful. No doubt the system would be difficult to work successfully with such instruments as the ordinary civil police and village officials of Burma, but that seems no adequate reason for not making the attempt. I do not understand the force of the clause in Section 2, "whether the second offence was committed subsequently to the first conviction or not," taken with the sentence following. If the second offence was committed before the first conviction, the offender would not be liable under Section 75, as I interpret that section.

2. It is certain that many habitual offenders get quite insufficient sentences of imprisonment even when their previous career is known to the convicting Court. But I think it is pretty certain also that sentences of transportation for life would not at present meet with support from the Appellate Courts. Again, Sessions Courts, with multifarious duties, discourage the committal of persons charged under Section 75, Indian Penal Code, for trial.

It would be a very useful measure to enact, as suggested, that conviction might be entered by a Magistrate and the case sent to the Sessions Court for sentence. Nor can I see any logical reason for not permitting a District Magistrate empowered under Section 34, Criminal Procedure Code, to pass any sentence permissible for the offence and within such special powers in cases referred to him under Section 349.

3. The provisions of the draft Bill in regard to assessment of compensation and fine on a village or other area for the offences of mischief and arson are, in my opinion, very proper and likely to be beneficial where these offences are common. The enforcement of village and circle responsibility is in harmony with the ideas of the people, and admirably suited to repress such crimes as those referred to. Happily, at present, however, no special measure of the kind is actually necessary in this province.

From MAJOR C. H. E. ADAMSON, C.I.E., Deputy Commissioner, Meiktila, to the Under-Secretary to the Chief Commissioner, Burma,—No. 2-8—538, dated the 16th September 1890.

With reference to your letter No. 247-94C., dated the 9th July 1890, I have the honour to state that in this district I do not consider that the amount of crime is as yet at all influenced by the introduction of telegraphs and railways. I think that at present improved means of communication are altogether in favour of the authorities, though no doubt as education and civilization increase the criminal classes will more and more avail themselves of the facilities offered to them to evade justice. In so far as my experience of Burma goes, there is but little, if any, organized crime extending throughout the country, and offences are generally committed by local men.

2. I do not consider that Sections 109 and 110, Criminal Procedure Code, have much effect in preventing crime in Burma.

It is very difficult to get persons to come forward to give evidence as to the bad repute of an accused person, and it is most easy for him to get persons to swear that they have seen him working as a coolie or that his wife supports him. Owing to this the police are often unable to procure an order to give security, though they have every reason to suspect accused is one who never does any work and who lives by thieving. This disheartens them, and they cease to send up cases before the Magistrate.

Section 110 is almost unworkable, as to *prove* that a man is a habitual robber, house-breaker, etc., he must have been convicted of these offences, and he is then punished for the

offences themselves. It has, moreover, been held, *in re Haidar Ali, Indian Law Reports, 12, Calcutta, 520,* that the mere fact that a person has been previously convicted is not sufficient to justify proceedings under this section.

Again, it has been held that it is not because a man is a bad character he is therefore liable to be called on to give security, but that there must be satisfactory evidence that he is within the category mentioned in Section 110.

The difficulties in the way of working these sections effectively are too great to allow them to be of much real value. If a secret register of suspected persons could be kept up by the police, and if the police could at intervals visit the houses of these suspects and make them account for their movements at such times as they discovered them absent, and in the event of their failing satisfactorily to give an account of themselves could produce them before a Magistrate to show cause why they should not give security, I think the effect in Burma would be good.

There still appears to be great difficulty in discovering the previous convictions of prisoners, and thus men who deserve heavy sentences receive but light punishments. Would it be possible to make same provision to the effect that if in jail it is discovered that a convict who has been awarded a light sentence as a first offender is a habitual criminal, he should be liable to be sent back to the Magistrate before whom he was tried in order that the former conviction may be proved and the sentence enhanced. With regard to paragraph 6 of your letter, I have the honour to say that the suggestion therein contained, namely, that a Magistrate should be empowered to enter a conviction in a case cognizable by the Court of Session (only because the offender has been previously convicted) and refer the case to the Sessions Court for enhanced punishment, has my full approval.

The provisions of the proposed Bill, I think, will strengthen the hands of the magistracy.

If the term "habitual offender" as defined in this Bill were used in Section 110, Criminal Procedure Code, in the place of "an habitual robber, house-breaker or thief, etc.," it would render the duties of the police much less difficult than they are at present.

ASSAM.

From F. C. DAUKES, Esq., Officiating Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department,—No. 5039 J., dated Shillong, the 6th December 1890.

I am directed to acknowledge the receipt of your letter No. 1—424, dated the 31st May 1890, forwarding, for an expression of the Chief Commissioner's opinion, certain papers on the subject of more stringent regulations for the control of habitual offenders in India.

2. In reply, I am to forward, for the information of the Government of India, copies of letters noted in the margin, which contain the opinions of certain officers consulted in the matter, and to state that the general tenor of opinion is to the effect that the proposed alterations in the law for the surveillance of bad characters, though not urgently called for in this Province at present are likely to be useful, and may, as communications improve and the Province advances, become equally necessary in Assam as in other parts of the Empire.

Letter No. 1779, dated the 8th August 1890, from the Deputy Commissioner, Cachar.
" No. 1459, dated the 12th August 1890, from the Deputy Commissioner, Kamrup.
" No. 1824, dated the 14th August 1890, from the Deputy Commissioner, Khasi and Jaintia Hills.
" No. 924, dated the 15th September 1890, from the Commissioner, Assam Valley Districts.
" No. 4766, dated the 22nd September 1890, from the Deputy Commissioner, Sylhet.
" No. 5982, dated the 8th October 1890, and enclosures, from the Inspector General of Police, Assam.
" No. 2501, dated the 11th October 1890, from the Deputy Commissioner, Lakhimpur.

3. As regards the proposal to levy compensation from the residents of certain localities for damage caused by acts of mischief, the perpetrators of which cannot be brought to justice, opinions are somewhat divided, and so far as Assam is concerned, the Chief Commissioner cannot say that such a provision is needed, though in other parts of India the case is doubtless different. Mr. Quinton's connection with the administration of the criminal law in the Upper Provinces is not of recent date, but the offence of cattle poisoning was at one time widely prevalent in particular localities. It was, however, supposed to be committed almost entirely by *Chamars* for the sake of the hides of the poisoned cattle; and should there be now any necessity for the special means proposed for checking this and similar offences, the obligation to compensate the sufferers should, Mr. Quinton thinks, be limited to the classes who notoriously benefit by the offence. For instance, it would be obviously unreasonable to call on Brahmins to pay compensation for killing cows. On the whole, the Chief Commissioner is inclined to think that sections embodying such provisions should not be of univer-

sal application, but should be made applicable to a Province only with the sanction of the Government of India, who, before according sanction, would, of course, require to be satisfied as to the necessity for their enforcement.

4. The suggestions of the Commissioners who visited the penal settlement of Port Blair respecting the propriety of bringing to the notice of the judicial authorities the advantage of sentences of transportation in the cases under discussion, and the instructions of the Governor General in Council regarding an examination of the records of convictions against habitual offenders now under confinement in jail, and calling for explanations in the case of inadequate sentences, will be attended to.

5. The suggestion of the Madras High Court, referred to in paragraph 6 of the letter under reply is generally approved, and the Chief Commissioner thinks that it may be adopted with advantage, though in the Assam Valley, where all trials before the Sessions Court are by jury, its effect would be but small, if the option recommended in the last paragraph of the High Court's letter No. 2092, dated the 27th July 1885, is allowed to the convict. Looking, however, to the provisions of Sections 30 and 34 of the Criminal Procedure Code, the Chief Commissioner considers that such option need not be allowed at least in the provinces to which these sections apply. The proposed amendment, without this option, will merely extend the powers, under Section 34, of Deputy Commissioners, who may try an offence not punishable with death, to passing sentences of transportation under Section 75 of the Indian Penal Code of a longer period than seven years in the case of habitual offenders.

From J. D. ANDERSON, Esq., Deputy Commissioner of Cachar, to the Secretary to the Chief Commissioner of Assam,—No. 1779, dated the 8th August 1890.

In answer to your letter No. 2610—16 J., dated the 28th ultimo, I have the honour to say that the sections of the proposed Bill relating to surveillance seem to me to legalize and fortify the existing practice. I do not, however, think that Section 12 of the Bill will be required here. The class of crime for which it is meant to provide is unknown. I think that 1st Class Magistrates might be empowered to send cases to the Sessions Judge or District Magistrate with special powers for enhanced punishment. With reference to the remarks on the advantage of life-term sentences of transportation, I think Deputy Commissioners might be allowed to transport for life, and not only, as now, for ten years. I think chaukidars should be made more directly responsible for the behaviour of bad characters living in their jurisdiction. I think they should be very severely punished for not reporting the absence of bad characters from their homes.

From G. GORDON, Esq., Offg. Deputy Commissioner of Kamrup, to the Secretary to the Chief Commissioner of Assam,- No. 1459, dated the 12th August 1890.

In reply to your No. 2610—16J., dated the 28th June 1890, received by me on the 4th August, I have the honour to address you briefly as follows: Regarding the general character of the Bill, although I have not, in the course of my experience as a Magistrate in the Province of Assam, had brought to my notice many cases of such habitual offenders as are dealt with in the Bill, and although I am of opinion that the existence of such professional offenders is in this Province of rare occurrence, yet I have found that, in instances which have come before me, the present state of the law is utterly inadequate to deal with this class of crime. In the sub-division of Barpeta about one and half years ago, there existed a body of professional burglars, against whom no evidence could be produced, but who were fairly well known to make their livelihood in this way. It was with the greatest difficulty that sufficient reason was shown to order them individually to find security for good behaviour, and it was only owing to the extended notoriety of their crimes that proceedings were at length taken against them. If there had been an organized system of enrolling habitual offenders, and the provisions of Section 4 of the proposed Bill had been in force, I do not think there would have been the same difficulty about bringing the matter to a crisis, and putting a stop to such malpractices. There is a second reason why the Act would be of great use in assisting the prevention of crime, and that is because it would draw a hard-and-fast line between habitual and other criminals, which is much wanted. Under the present system, habitual criminals are certainly entered in a special police register, but not enough distinction is made between them. The system of looking upon discharged convicts as a class, and not distinguishing clearly between habituals and others, tends to put such men all upon the same level, and a professional thief is no more strictly watched than a man who has caused hurt in a drunken brawl. Such a system as registering habitual offenders and keeping them under surveillance for a term of years would certainly have a wholesome effect in every way. Sentences of imprisonment do not seem, in

many cases, to have a deterrent effect at all; but if the provisions of Section 9 of the proposed Bill were properly applied, and habitual offenders could be at once arrested without warrant by the police or village watchmen, in many cases the offenders would be completely held in check, and would find no opportunity for indulging in such practices. I do not suppose that there is such urgent necessity for a law of this kind in this Province as in other parts of India, but I think that the extension of it here would cause Magistrates to pay more attention to the question, and it would be of great assistance to the police, who at present do not show sufficient eagerness to point out previous convictions when the effect is only to slightly enhance the sentence without any ulterior advantage being obtained. As regards Section 12, I cannot report that in my experience such offences are committed by habitual criminals. Mischief to cattle is nearly always caused from annoyance caused by their trespassing, and offences under Section 429 do not, as a rule, differ much from those under Sections such as 323, 324, and 325: in the one case a man striking another in a quarrel, and in the other he is striking or cutting a cow or a buffalo in an outburst of temper at the damage it has done to his crops. I have not come across any organized cases of cattle-poisoning, all such as I have met with being isolated instances, such as I have above stated. Incendiarism also, though common, does not appear to me to be generally the result of conspiracies to commit mischief to property; nor do I think the inhabitants of this Province keep back information that might lead to the detection of the offenders. I would imagine the Local Government would seldom think it necessary to extend the section to any part of its jurisdiction. This clause does not appear to me to have much connection with the rest of the Bill, and I hardly think it a necessary addition in this Province.

From G. GODFREY, Esq., Deputy Commissioner, Khasi and Jaintia Hills, to the Secretary to the Chief Commissioner of Assam,—No. 1824, dated the 14th August 1890.

With reference to your No. 2610—16J, dated the 28th June 1890, forwarding, for expression of opinion, certain papers relating to the control of habitual offenders in India, I have the honour to report that, with respect to judicial sentences, I think the recommendations of the Commission are worthy of adoption, and that habitual offenders should be more freely sentenced to transportation.

2. The suggestion that Magistrates, when trying an offender for a second or subsequent offence, should be empowered to record a conviction and to send the accused to the Sessions with a view to a sentence of transportation or other sentence beyond the power of the trying Magistrate being passed, is a good one. The accused still has his right of appeal, and the time of the Sessions Court is economised, and much inconvenience is saved to complainants and witnesses and to the prosecution. I certainly think that this procedure should be adopted.

3. With regard to police surveillance of habitual offenders, I think that something more is wanted than the present system of domiciliary visits by the police. When a person is declared by the Magistrate to be a fit person to be under police surveillance (and it is very necessary that the Magistrate, and not the police, should have authority in this matter), it would be more satisfactory to oblige the person affected to report himself regularly at the nearest police outpost or station. I do not see what object is gained by having a secret register of persons sentenced (as it were) to police surveillance; they are proclaimed evil-doers, and they should be made to account for all their movements. Not only should they be obliged to report themselves at stated intervals, but they should not be allowed to leave the area of their *habitat* without obtaining a pass, and due notice should be given to the police of the place to which such persons migrate, even temporarily, in order that the same system of surveillance may be continued. In the case of mere suspects a secret register might be maintained, and the present system of domiciliary visits by the police might be continued, but I would make a broad distinction, as indicated above, in the treatment of habitual offenders who have been declared by the Magistrate to be fit for police surveillance and that of more ordinary offenders and suspects.

4. I am not aware that there are epidemics of mischief and arson in any part of the Province, but there is no harm in applying to such cases, when they occur, the principle which guides the quartering of punitive police on turbulent areas. Of c urse, in some Provinces the proposed measures would be, I think, of considerable immediate benefit. They may also be found useful in Assam at some future time.

From H. LUTTMAN-JOHNSON, Esq., Commissioner of the Assam Valley Districts, to the Secretary to the Chief Commissioner of Assam,—No. 924, dated the 15th September 1890.

I have the honour to acknowledge the receipt of your letter No. 2610J, dated the 28th June 1890, forwarding copy of letter No. 1—424, dated the 31st May 1890, from the Secretary to the Government of India in the Home Department, on the subject of legalizing the

control of habitual offenders, and requesting me to express my views thereon. In reply, I have the honour to say that my division, and indeed the Province generally, does not produce many habitual offenders. The people are too well-off. But we are subject to incursions of habitual offenders from other provinces, both in gangs and as single immigrants. As an instance of the former, I may mention a gang of house-breakers from Rajshahye in Bengal, who raided Goalpara district in a boat a few years ago, and a case of house-breakers from Peshawar, which occurred last year, about which the Inspector General of Police can give information. As an instance of the latter, I may mention an habitual offender from the Arrah district, who came as an immigrant to the Chargoa Valley in Sylhet when I was Deputy Commissioner of that district. Any action taken in other Provinces for the control of habitual offenders will be of advantage to us. But the necessity for any action in this Province has, I think, not yet been established. We are a depredated, not depredating, Province.

2. Some police surveillance is necessary in connection with assisted immigration to tea-gardens. I suppose the police authorities in the recruiting districts inform the Inspector General of Police, Assam, when a person under police surveillance migrates to Assam under Act I, 1882.

3. I have known the provisions of Sections 505 and 506 of the Criminal Procedure Code of 1872 used on a very extended scale; and I have thought that some restriction should be placed on the powers of zealous Magistrates to fill our jails to overcrowding with persons reputed to be of notorious bad livelihood. I think the alteration of the law in the Code of 1882 was a mistake. Our zealous Magistrates can be curbed by executive authority. Though we have habitual offenders (mostly imported), Section 110 of the Code of Criminal Procedure is little used in my division. In the five years ending 1889, only 42 persons have been ordered to give security under this section in my division. This shows, not, I think, that Magistrates have been supine, but that necessity for putting the law in force has not arisen.

4. The exemplary punishment of habitual offenders has, I am afraid, been a good deal neglected. I have always gone into this matter in inspecting criminal courts, and I think there has been improvement of late years. The very light sentences imposed under Section 457 have attracted my attention as an appellate court in criminal cases. Police surveillance of convicted persons and of bad characters is maintained under the rules printed at pages 297-300 of Wilkinson's Police Manual.

5. I am quite of opinion that a register of bad characters should be maintained as at present, and that such persons should be kept under surveillance. I can see no objection to giving present practice a legal basis; but so far as my division is concerned, we manage very well without legal sanction. I have known persons convicted, who had been for years of exemplary conduct and character, persecuted with police enquiries in an unjustifiable manner. I think if a law on the subject is enacted, it should contain a provision that convicts who have been of good behaviour for a term, perhaps five years after release from jail, should no longer be subject to surveillance.

6. I approve generally of the proposals contained in paragraph 4 of the Government of India's letter. It appears to me that the principle that the community should subscribe to make good losses caused to individual members by criminal members is a good one, especially in India, where "public spirit" requires some such encouragement.

7. As stated above, inadequacy of sentences in cases of habitual offenders has attracted my attention. I am now going through a list of such offenders confined in our jails, with a view to calling for the records in cases where it appears that the Magistrate should have committed the accused either to the sessions or to the Deputy Commissioner's court. In this connection I would refer to Circular No. 17, dated the 2nd October 1877, and to the correspondence noted in the margin, which has taken place regarding the orders it contained.

No. 1191, dated the 27th July 1880, from the Secretary to the Chief Commissioner, to the Judge.
No. 947, dated the 19th June 1880, from the Secretary to Chief Commissioner, to the Legal Remembrancer, Calcutta.
No. 1619, dated the 12th September 1877, from the Registrar of the High Court, to the Secretary to the Chief Commissioner.
No. 46, dated the 17th August 1877, from the Judge, Assam Valley Districts, to the Registrar, High Court.

8. There can be no doubt whatever that Magistrates do refrain from committing habitual offenders to the sessions and the Deputy Commissioner. The circular above quoted partly accounts for this. But that circular does not prevent committals to the Deputy Commissioner who has power to transport for seven years. It must be remembered that prosecutor, witnesses, indeed every one, especially the prisoner, is anxious to avoid the expense and trouble of another hearing before the sessions or Deputy Commissioner. I approve of the proposal

made in paragraph 6 of the Government of India's letter. I am inclined to agree with the Madras High Court that the accused should have the option of committal for trial.

9. When I first took up the appointment of Commissioner and Judge of the Assam Valley Districts, I found that the register of persons convicted of heinous offences was not carefully maintained. I have remedied this. But of course no local record will enable a court, or the prosecution, to trace the criminal career of an immigrant offender.

10. I do not deal with details of the Bill proposed by the Punjab Government. But I may note that it does not legalize present practice in Bengal and Assam. Magistrates and District Superintendents place under surveillance persons who have never been convicted and who have never been ordered to give security for good behaviour. This is a power which it is very necessary to retain. I fear that if a law is passed, sanctioning the surveillance of convicted persons, the surveillance of unconvicted persons may come to be looked on as illegal.

11. I think the Whipping Act should be amended on the basis of Section 75 of the Penal Code. I think whoever, having been convicted of an offence punishable under Chapters XVII and XII of the Indian Penal Code, is again convicted of an offence punishable under either of those chapters, should be liable to whipping in addition to any other punishment.

From J. KENNEDY, Esq., Deputy Commissioner of Sylhet, to the Secretary to the Chief Commissioner of Assam,—No. 4766, dated the 22nd September 1890.

I beg to reply to your No. 2610—16J, dated the 28th June 1890, with enclosures, on the subject of alterations in the law regarding bad characters, etc. The papers appear to have been received here, during my absence on leave, on the 7th of last month.

2. As to surveillance as a punishment to follow conviction in certain cases, just as under Section 106, Criminal Procedure Code, an order to give security to keep the peace may follow certain convictions, I consider the proposal a very good one. It constantly strikes me, when going through the thana bad-character registers, how little the police know of the men whose movements they have been ordered to watch by the court which convicted the offender "Said to have gone to Calcutta;" "whereabouts unknown to his neighbours;" "left the thana"—are common enough entries. Of course, the probability is, in 50 per cent. of these cases, that the offender is carrying on his old practices elsewhere.

3. Surveillance permissible in place of security to be of good behaviour in cases under Section 110, Criminal Procedure Code, would also be a good move. We can't hope to reform a man in the jail; but if he is forced to live for some years a respectable life, he may quite possibly discover that honesty pays.

4. On the subject of rendering the neighbourhood liable for damage resulting from certain forms of mischief, *e.g.*, arson and cattle-poisoning, I have never met with any particular outbreak of these offences against any one class. I have only known of cases when a man takes his revenge on a private enemy, and these of course were isolated cases, for which the neighbourhood could in no way be considered responsible. A common form of arson, also, is that of burning down a bazar, when there is no sale for grass and bamboos, in order to send up the price of such articles. For this also the community could not be held responsible. But I can well conceive that legislation of the kind proposed would be most useful in certain cases, and the only precaution required is to determine the nature of the enquiry and the class of officers competent to pass the necessary orders.

5. The proposal to extend the provisions of Section 349, Criminal Procedure Code, to sessions cases when they would be ordinarily triable by a Magistrate, and are only committed to the sessions by reason of previous conviction, would be a great relief alike to courts and witnesses. These cases are often specimens of purely formal procedure.

From J. J. S. DRIBERG, Esq., Inspector General of Police, Assam, to the Secretary to the Chief Commissioner of Assam,—No. 5982, dated the 8th October 1890.

I have the honour to acknowledge the receipt of your letter No. 2609J of the 28th June 1890, forwarding copy of letter No. 1—424, dated the 31st May, from the Secretary to the Government of India in the Home Department (with enclosures), on the subject of more stringent regulations for the control of habitual offenders, and in reply beg to submit the following report. I was requested to consult certain police officers; I did so. The last of the replies reached me on the 7th October; hence the delay which has taken place in the submission of this report.

2. The first three paragraphs of the Government of India's letter explain the present state of matters in regard to habitual offenders, the difficulties which exist, from a police point of view, in dealing with such offenders, and the proposals which have previously been made; and in the 4th paragraph opinions are asked upon the Bill framed by the Punjab Government for the better surveillance of habitual criminals.

3. In this Province we have few habitual offenders, compared with other Provinces in India. We have no criminal tribes, and our habitual offenders are more of the class who commit petty thefts and small burglaries. At the same time, with the development of, and improvement in, our system of railways and steamers, and the large increase to our population from without, we must be prepared at any time to find members of criminal tribes who are, or are liable to become, habitual offenders in Assam; and in this view I approve of the first portion of the Bill, which deals with such offenders and gives the Local Government power to make rules regarding the maintenance of registers of persons under surveillance. The law is, no doubt, a drastic one, but I can quite understand the necessity for it in parts of Upper India and Bengal, and I would have no objection to its being made generally applicable to this Province, though its provisions would have to be worked with care, judgment, and discretion.

4. I have said that I agree to the first portion of the Bill. I am not prepared to give my adherence to Section 12. In the first place, I do not think it is necessary for Assam. It cannot be said we have any professional cattle-poisoners or incendiaries here. True, both these crimes do occur pretty frequently in the Sylhet district, but I do not think they are sufficiently numerous to require special legislation. Such crimes nearly always baffle the police, so that clauses 2 and 3 would come into operation, and these are the clauses which, I think, are obviously objectionable. With whatever safeguards we may surround it, the power of harassing peaceable and innocent people is very great, bearing in mind the agency through which we must necessarily work and the ignorance and backward state of the people. This section of the Bill, if passed, would be rather an incentive to false charges against no specified offender, with the view of levying blackmail from the inhabitants generally. Of course, village public opinion would in a certain measure counterbalance this, but still I think it would be dangerous to enact the law; and so far as we are concerned, I do not think the necessity for it has yet arisen.

5. In paragraph 5 of the Government of India's letter, the frequency with which inadequate sentences are passed by criminal courts is commented on. This is no doubt the case here as elsewhere. I think the provisions of Section 75 of the Indian Penal Code should be brought frequently and prominently to the notice of all courts, and I think it would be an improvement, and induce to the section being more regularly used, if all courts, both sessions courts and magistrates' courts, were required to send in quarterly returns showing the number of cases in which enhanced punishment could have been awarded under Section 75, but were not passed, with brief reasons. I do not think that this could be in any way considered as interference by the executive with magisterial discretion. The reports could go to the Local Government direct or to the Inspector General of Police, who would, where necessary, communicate with the Local Government.

6. The suggestion contained in the 6th paragraph of the Government of India's letter is, I consider, an excellent one. Magistrates should be empowered to enter a conviction in the case of a criminal offender, and refer the case to the Sessions Judge for an adequate sentence. The Judge could, if necessary, direct further evidence to be taken, or take it himself; but he should act alone, and not as a court with a jury or assessors.

7. I annex copies of the reports submitted by the District Superintendents of Police of Goalpara, Garo Hills, Lakhimpore, and Sylhet. These are all experienced police officers.

From A. E. C. BOLST, Esq., District Superintendent of Police, Goalpara, to the Inspector General of Police, Assam,—No. 533, dated the 28th August 1890.

I have the honour to submit an expression of my opinion on paragraphs 4, 5, and 6 in letter No. 1—424, dated the 31st May 1890, from the Officiating Secretary to the Government of India, to the Chief Commissioner of Assam, regarding the control of habitual offenders as well as the prevention of special acts of mischief, forwarded with enclosures with your memorandum No. 5340, dated the 12th August 1890.

The provisions in the Bill referred to in paragraph 4 of the Government letter upon the subject to legalize the surveillance of "habitual offenders," if applied with firmness, would most effectually check those pests of society from preying on society.

The provisions in the Bill about the prevention of special acts of mischief are necessary. These offences, when committed, are not only most difficult to detect, but most difficult to

prove. Wherever they are prevalent and remain undetected, the value of property destroyed should be recovered from the inhabitants in the village in which they had been committed. To be able to levy such compensation, the conditions such as regulate the power to impose punitive police should be observed. If being in possession, without a license, of arsenic or strychnine, with which cattle are generally destroyed, was made a criminal offence, it would help to check the destruction of cattle by poison.

With reference to paragraph 5, there is no doubt of the inadequacy of short sentences on habitual offenders, and that sentences of transportation for life should always be passed on an offender, who has been habitually guilty of offences against property.

The suggestion in paragraph 6, that in the case of an habitual offender a magistrate should be empowered to enter a conviction and refer the case to the sessions court for an adequate sentence, is a good one, and should be adopted.

From J. T. RIVETT-CARNAC, Esq., District Superintendent of Police, Garo Hills, to the Inspector General of Police, Assam,—No. 74C., dated the 30th September 1890.

I have the honour to acknowledge receipt of your memorandum No. 5340, dated the 12th August, forwarding, for an expression of opinion on certain points, a letter No. 1—424, dated the 31st May, from the Government of India, with enclosures, and reply as follows.

I will deal with the matters treated of in paragraphs 4, 5 and 6 of the Government of India's letter separately.

Paragraph 4.—I think that the draft Bill framed by the Punjab Government to provide for the more effectual control and surveillance of habitual offenders will, if made law, greatly strengthen the hands of the police in the matter of detection and prevention of crime, and I do not think that its provisions are too rigorous as against habituals, in view of the benefits it will confer on the community at large. Besides the registers, etc., which it is proposed to maintain in connection with this system of surveillance, it will, I think, still be necessary for the police to keep some record of convictions under Chapters XII and XVII of the Indian Penal Code independent thereof, otherwise there will always be the chance of an offender, who has already been convicted in some other magisterial jurisdiction or district, escaping from being classed as an habitual through the fact of his previous conviction elsewhere not being known.

As regards the measures which paragraph 12 of the draft Bill contemplate for the prevention of mischief, such as cattle-poisoning and incendiarism, I do not feel in a position to speak with so much certainty. The principle of granting compensation at the expense of the community for mischief done by some individual member or members thereof is the same, it is true, as that which governs the imposition of the punitive police tax; but in India the system will be liable to be abused. For instance, it is not impossible to conceive that a person, wishing to realize on a valueless property, might wilfullyfire his own house, and then report it as a case of mischief by others, stating his losses, at the same time, at a higher figure than they actually amounted to. Even an individual could, by these means, get his neighbours, and possible enemies, into trouble without loss to himself, and with possible gain, in fact, if he judiciously overstated his actual losses, it is not unlikely that he would have imitators, the result being an epidemic of such cases brought about by a procedure intended to have the opposite effect. In this case, therefore, the remedy proposed might have effects worse than the disease itself, and I hesitate to support it as it stands in the Punjab draft Bill. Still if the local authorities take great care to ascertain that the mischiefs committed are really the work of others, and not caused in the way I have indicated, before applying to the Local Government to gazette the affected tract, the experiment might, I think, be tried in Provinces where cattle-poisoning and incendiarism are common. In this Province, for instance, Sylhet is a district where incendiarism in the dry season is rife, and has proved beyond the powers of the police to cope with successfully. There is another point, too, on which I should like to say something. When a Magistrate makes an award for loss sustained he should have something more than the investigating police officer's report to go upon. An estimate of the loss sustained, signed by the headman of the village or by the members of the *panchayets*, would, on the whole, be safer ground to go upon in such a matter than a police report.

Paragraph 5.—I think that if Section 75 of the Indian Penal Code, which authorizes the infliction of a sentence of transportation for life in the case of persons habitually guilty of offences against property, is more largely resorted to than at present, the result will be good, not so much from the deterrent and reforming effect of a sentence of transportation, as from the fact that

the offender will be deprived, for a long period, of the opportunity for preying on society. It is possible that the wholly new influences brought to bear on a convict in transportation may have the effect of reforming him, and in this connection statistics as to the lives led by time-expired Andaman men subsequent to their release would be useful. I can myself call to mind one instance, at any rate, of a time-expired Andaman convict, who had been sentenced for dakáiti, being again convicted of dakáiti shortly after his return. It occurred in Midnapore, I think; and I have recollections of other cases too. Still, for the reasons already stated, I think it would be better to transport habituals under the powers conferred by Section 75 of the Indian Penal Code than to sentence them to short periods of confinement in Indian jails, which appear to have no deterrent effect, due possibly to the nature of the imprisonment not being sufficiently rigorous.

Paragraph 6.—I am decidedly of opinion that in cases which become cognizable by the court of sessions by reason of the fact of the offender having been previously convicted, and seeming to be a habitual, the Magistrate should be empowered to enter a conviction, and refer the case to a sessions court for an adequate sentence in the same manner as a Magistrate of a second or third class now does when taking action under Section 349 of the Code. The interests of the accused will, I think, be sufficiently guarded by the sessions court being empowered to make or direct such further enquiry as it thinks fit and being bound to hear the offender. I would not give the accused the option between a sentence on the Magistrate's reference and a committal to the sessions for trial by jury, as in that case he would probably invariably elect for the chance of escape afforded by the latter, and the witnesses for the prosecution would be subjected to the hardship of giving evidence again at the sessions. In petty cases, merely by the fact of the accused being an habitual offender, sentences of transportation passed by Sessions Judges under the procedure might be made confirmatory by the High Court.

From the District Superintendent of Police, Lakhimpur, to the Inspector General of Police, Assam,—No. 548, dated the 29th August 1890.

In reply to your memorandum No. 5340, dated Shillong, the 12th August, requesting my opinion on a letter from the Officiating Secretary to the Government of India with regard to the proposed Act for the surveillance of habitual offenders—

2. I beg to say that I have for some time past, from my experience as a police officer in Bengal, been strongly of opinion that some such enactment is most necessary, and would have a most beneficial effect.

3. With regard to paragraph 4 of Mr. Lyall's letter, I am entirely in accord with the principles embodied in the proposed Bill. Besides acting through its penal clauses as a deterrent, it will greatly strengthen the hands of the police, both in the prevention and the detection of crime.

The section dealing with levying compensation is also, I think, a desirable one, but one that should be applied with extreme caution.

4. In regard to paragraph 5 of the letter, my experience in this country has long since taught me that in order that a sentence should have any deterrent effect, especially on an habitual criminal, it should be made as severe as possible: and I have frequently regretted that Section 75 of the Penal Code is not more rigorously applied. Sentences of transportation, besides being, as shown by the extract from Mr. Lyall and Surgeon-Major Lethbridge's letter, the best means of reclaiming offenders to a better mode of life, would also be for the benefit of the community at large by keeping such characters at a distance from the scene of their former crimes.

5. I most strongly advocate the reform suggested in paragraph 6 of the letter, not only in regard to cases where the offence is cognizable by the court of sessions on account of a previous conviction, but also in regard to those triable by the first-class Magistrate, but the full penalty attaching to which his limited powers do not permit him to inflict. But with respect to paragraph 9 of the letter from the Acting Registrar to the Madras High Court, I must express my decided opinion that if the suggestion therein contained, making it optional for the accused to be committed for trial, instead of being sent up for sentence to the sessions court, when carried out, the whole object of the enactment would be entirely defeated. The accused knows that he must be punished, and that probably more heavily than it was in the power of the Magistrate to punish him. So that the result would be that every person in such a position would prefer to take his chance before a jury than be sent before the higher court, with the certainty of fine or imprisonment, and thus the measure could practically become non-existent, and I fail to see that the accused would be prejudiced, as the sentence is

entirely at the discretion of the sessions court, and it, by inflicting merely a nominal punishment, could, if it saw fit, virtually acquit the prisoner. But he could of course be heard.

From D. W. RITCHIE, Esq., District Superintendent of Police, Sylhet, to the Inspector General of Police, Assam,—No. 1400, dated the 28th August 1890.

I have the honour to acknowledge the receipt of your office memorandum No. 5340, dated the 12th instant, forwarding the copy of a draft Bill for the more effectual surveillance and control of habitual offenders, and requesting an expression of my opinion thereon.

Letter No. 1—424, dated the 31st May 1890, from the Secretary to the Government of India, to the Chief Commissioner of Assam.

Extract paragraphs 3 and 27 of a letter from C. J. Lyall, Esq., C.I.E., and Surgeon-Major A. S. Lethbridge, M.D., Inspector General of Jails, Bengal, to the Secretary to the Government of India, Home Department, dated the 26th April 1890.

Extract paragraphs 7, 8 and 9 from letter No. 2092, dated the 27th July 1885, from the Registrar of the High Court of Judicature at Madras, to the Secretary to the Government of Madras.

Letter No. 577S., dated the 30th September 1889, from the Secretary to the Government of the Punjab, to the Government of India, Home Department.

2. Having carefully perused the copy of the Bill referred to above and the copies of the correspondence as per margin, accompanying it, I have the honour to state as follows, namely, as far as the copy of the Bill relates to habitual offenders of crimes under Chapters XII and XVII, Indian Penal Code, I quite approve of every part of the provisions contained in it. There is no doubt that if habitual offenders are dealt with, in the matter of surveillance and of the taking of security from them, etc., in the manner provided for in the copy of the Bill, they will be more easily kept in hand and controlled than at present. The effects, too, upon this class of offenders will be of a repressive kind.

With regard to Section 75, Indian Penal Code, which authorizes the infliction of a sentence of transportation for life in the case of persons habitually guilty of certain offences, what is stated in paragraph 5 of the Government of India Secretary's letter (as per margin) as to the small extent to which the provision of the said section is resorted to, is correct. In my opinion the provision should be resorted to, to its fullest extent, in every appropriate case of an habitual offender being brought to trial for any of the offences specified in Chapters XII and XVII, Indian Penal Code. The transportation for life of such offenders would soon, I think, result in a check being given to the more serious kinds of crime, such as burglary, cattle-theft, etc., etc., against property which it is so difficult, as matters are at present, to keep within bounds. We have had here, during the present year, two cases in which the accused, habitual thieves, by house-breaking at night, have been awarded transportation for life under the provision of Section 75, Indian Penal Code, and though it is not so very long ago since these extreme sentences were inflicted, the good effects in a decrease in burglaries are already apparent. I, therefore, am of opinion that this section (75) of the Indian Penal Code should be so revised as to allow of a Judge no option, in such a case, but of transporting the prisoner for life. The results that such a measure would give rise to would be of a salutary and beneficial kind.

Letter No. 1—424, dated 31st May 1890, from the Secretary to the Government of India, to the Chief Commissioner of Assam.

As to what is noted in paragraph 6 of the same letter, I am also of opinion that the Criminal Procedure Code should be so amended that in cases which become cognizable by the court of sessions merely because the offender has been previously convicted, and therefore seems to be a habitual criminal, as to empower the Magistrate to enter up a conviction, and then refer the case to the sessions court for adequate sentence. The good effects of this would soon become apparent too, I think, for the reasons given in the last sentence of the Madras High Court's Officiating Registrar's letter as per margin.

Letter No. 2092, dated the 27th July 1885, from Registrar of High Court of Judicature at Madras, to the Government of Madras.

3. With reference to Section 12 of the copy of the Bill, which provides for the prevention of certain acts of mischief, such as cattle-poisoning and arson, though in this part of this province such acts are not usually rife to a remarkable or an extraordinary extent, still, as it would be an advantage, in any emergency of such crime becoming frequent, to have the provisions of such an Act of law at hand to fall back upon and make use of, I am of opinion that paragraph 12 of the copy of the Bill should be retained without revision or amendment.

From W. B. BROWN, Esq., Offg. Deputy Commissioner of Lakhimpur, to the Secretary to the Chief Commissioner of Assam,—No. 2501, dated the 11th October 1890.

With reference to your No. 2610—16J, dated the 28th June 1890, I have the honour to state that I approve generally of the provisions relating to the surveillance of habitual offend-

ers drawn up by the Government of the Punjab. The details of the system of surveillance should, I think, be left for each Local Government to settle according to the circumstances of their Province.

In the present state of things, Section 12 of the Bill does not seem to be at all required in Assam, and I doubt very much whether it should be enforced anywhere.

The proposal of the Madras High Court to give courts of sessions powers similar to those of a District Magistrate under Section 349, Criminal Procedure Code, seems to me an excellent one, and to be peculiarly adapted to Assam. Owing to the enhanced criminal powers of Deputy Commissioners and other causes, it is rare that any cases, except those punishable with death, are committed to the sessions court, and I think it probable that many habitual offenders get off with three or four years from the Deputy Commissioner, who would be the better of a sentence of transportation.

COORG.

From L. S. NEWMARCH, Esq., Secretary to the Chief Commissioner of Coorg, to the Secretary to the Government of India, Home Department,—No. 1092—117-90, dated the 19th July 1890.

I am directed to reply to your No. $\frac{1}{425}$, dated 31st May 1890, on the subject of the Habitual Offenders Surveillance Bill.

2. The opinions of the Commissioner of Coorg, whom the Chief Commissioner has consulted, are contained in the letter marginally noted.

Commissioner's letter No. $\frac{258}{157}$, dated 9th July 1890.

3. The Chief Commissioner agrees with the Commissioner and the Government of India that it would be better if the proposed law to deal with habitual offenders were made genera for the whole of India than if it were limited to a portion of it.

4. He does not, however, agree with the remarks made in paragraph 4 of the Commissioner's letter regarding the power of Magistrates to refer cases to the Sessions Court for punishment after recording a conviction, for it has yet to be proved by experience whether Magistrates will refer cases in this way more frequently than they should, and in any case their tendency to exceed in this direction can be sufficiently checked by an exercise of the ordinary judicial control and supervision at present available. The other of the Commissioner's objections to giving Magistrates this power appears to be based on a misapprehension of certain sections of the Criminal Procedure Code.

Section 349 of that Code appears to contemplate chiefly cases triable by Magistrates of the second or third class, who of course cannot try the more serious offences, which are exclusively triable by a Court of Sessions, *e.g.*, Sections 302, 395, 397, etc., Indian Penal Code.

Nor can such Magistrates try cases over which first class Magistrates and Sessions Judges have concurrent jurisdiction, *e.g.*, Sections 148, 152, 161, 164, 167, etc., of the Indian Penal Code.

Thus the offences which the Magistrates in question can try and of which they can find the accused guilty must be comparatively minor offences.

The only reason why such cases call for enhanced punishment is that the accused happen to be old offenders, and the Chief Commissioner considers that in respect of such cases there is no necessity for all the formalities of a committal and a trial by jury. He holds therefore that there is no objection to such cases being sent up to the Sessions Judge instead of to the District or Sub-divisional Magistrate for enhanced punishment, for if there be no objection to a District Magistrate dealing with these cases on materials recorded by another Magistrate, there should be still less ground for objection to a Sessions Judge dealing with them in the same way.

It may be contended that in such case the sentence being passed by the Sessions Judge, an appeal will lie to the High Court (Section 410, Criminal Procedure Code), and the powers of revision (section 439 *ibidem*) which it possesses will be taken away; but on the other hand it will be all to the advantage of the accused that the High Court will be sitting as a Court of Appeal instead of as a Court of Revision. For these reasons the Chief Commissioner considers the amendment proposed by the Government of India a desirable one.

5. For the rest I am to say that in other respects the provisions of the Punjab Bill appear to be suited to their object.

6. As regards paragraph 12 of the Bill, the Chief Commissioner is not in a position to give any opinion as to the necessity for its enactment, but, granting the necessity, he considers that the powers conferred are sufficiently limited and guarded by their restriction to the Local Government and the District Magistrate as controlled by the Commissioner of the Division.

7. The letter marginally noted is returned to you as requested.

Punjab letter No. 577-S., dated 30th September 1889.

From COLONEL T. G. CLARKE, Commissioner of Coorg, to the Secretary to the Chief Commissioner of Coorg,—No. 258—157, dated the 9th July 1890.

I have the honour to acknowledge the receipt of your office endorsement No. $\frac{830}{117\text{-}90}$ of 18th ultimo, giving cover to copy of letter from the Government of India, Home Department, No. $\frac{1}{425}$ of 31st May last, and to its enclosures, which are herewith returned.

2. Having read the draft Bill submitted by the Punjab Government, I consider that the provisions therein contained on the subject of placing habitual offenders under surveillance might be advantageously embodied in a general law for the whole of India. It is certainly desirable that habitual offenders of a certain class should not be permitted to wander about the country, as they do at present, and that means should be adopted such as the Bill provides for organizing an extended system of surveillance over them. Coorg is frequently visited by gangs of depredators who come from other parts of India (generally from the north of India), and men of this class find ready dupes among the people in the Nads.

3. Section 12 of the Bill refers to a condition of things which is not likely to arise in Coorg, nor probably in Southern India generally, but I see no objection to the enactment of the provision, the application of which to any province or tract will be made by special notification by the Local Government.

4. I am not in favour of the suggestion (in paragraph 6 of the Government of India letter), that as regards habitual offenders or persons that seem to be such, Magistrates should be empowered to refer such cases, after conviction of the offenders, to the Sessions Court for enhanced sentence. Magistrates will be tempted to refer such cases more frequently probably than may be at all necessary, but the main objection I feel is that it will be difficult for the Sessions Judge and assessors to deal satisfactorily with cases the evidence in which has not come before them. The procedure is suitable to minor offences dealt with by a District Magistrate, but if a severer sentence is to be passed than two years' imprisonment, the offender should be regularly tried by the Sessions Court.

5. I enclose copy of letter from the District Magistrate, No. $\frac{281}{62}$ of 3rd instant, submitting his views.

HYDERABAD.

From J. A. CRAWFORD, Esq., Secretary for Berar to the Resident at Hyderabad, to the Secretary to the Government of India, Home Department,—No. 90, dated the 20th March 1891.

I am directed to acknowledge the receipt of your letter No. 1—426, dated the 31st May 1890, on the subject of more stringent regulations for the control of habitual offenders in India.

2. In reply, I am directed to forward the opinions of the officials in the Hyderabad Assigned Districts who were consulted on the subject, and to say that, putting aside questions of detail which it would be premature to discuss at present, Sir Dennis Fitzpatrick approves highly of the proposal to establish a system of surveillance on the lines laid down in the first eleven sections of the Punjab Draft Bill.

Letter No. 3548, dated 3rd November 1890, from the Officiating Judicial Commissioner, Hyderabad Assigned Districts.

Letter No. 142, dated 29th January 1891, from the Commissioner, Hyderabad Assigned Districts, with enclosures.

3. The Resident agrees with the Commissioner that Section 12 of that draft is at present unnecessary in the Hyderabad Assigned Districts; but, as it is drawn so as to apply only under a special order of the Local Government, he sees no objection to its being enacted for the whole country generally.

4. The Resident quite agrees with Mr. C. J. Lyall and Surgeon-Major Lethbridge that transportation for life is the appropriate punishment for a person who has been convicted a large number of times even of petty offences of the classes referred to, and who, perhaps notwithstanding a sentence of six or seven years, continues to relapse into crime; and the Resident has issued instructions calculated to give effect to this view.

5. But cases of long strings of previous convictions, though sufficiently numerous to call for special orders, are, the Resident apprehends, comparatively rare, and in order to stamp out the pest of professional crime, it is necessary to attend even more carefully to the numerous cases in which accused persons come up with only two or three previous convictions. In such cases it would seem disproportionate to sentence to transportation for life, nor is any such severe sentence in the opinion of Sir Dennis Fitzpatrick necessary. Sentences of six or seven years' rigorous imprisonment and whipping are, as a rule, amply sufficient in these cases so far as the deterrent effect is concerned, provided (and this is the all-important point) that they are inflicted systematically and persistently in all such cases. At least this has been Sir Dennis Fitzpatrick's experience. It may be mentioned in particular that in Delhi in the years 1867—1869, where professional crime had been rampant, the effect produced by directing that

all cases with two previous convictions should be sent to the Deputy Commissioner for trial and passing sentences (save under very exceptional circumstances) of six or seven years, was such that the professionals left the place in large numbers, and there was an immense reduction in crime. In a province like the Hyderabad Assigned Districts, where the Deputy Commissioners are invested with powers under Section 34 of the Criminal Procedure Code, this is simple enough, and the mode of working it has recently been under discussion with the Judicial Commissioner.

6. In such a Province there is no necessity for any such amendment of the law as that suggested by the Madras High Court and referred to in paragraph 6 of the Government of India letter, inasmuch as, in the comparatively few cases in which a sentence of transportation for life or any other sentence exceeding seven years might seem called for, there would be no difficulty about committing the accused to the Sessions Court, and in such cases it seems more appropriate that he should be tried by the higher tribunal.

7. I am to add that, if the proposed amendment of the law were saddled with the condition proposed by the High Court, *viz.*, that the accused should have the option of being committed to Sessions, it would, it seems to the Resident, become absolutely nugatory. The case, it should be observed, is not like those in which an accused person elects a summary conviction in preference to a committal, having regard to the fact that, though the latter might give him a chance of escape, the former will involve a much lighter punishment. Here the accused is *ex hypothesi* not only certain to be convicted by the lower court, but further is certain, if the conviction is confirmed, as such convictions almost always would be, to get the very punishment which the higher court would award on an ordinary conviction before itself. His position is, therefore, so bad that it cannot be worse, and, that being so, it is impossible to suppose that he would do otherwise than elect to be committed in the hope of getting off by one of the many accidents which may occur on a new trial, especially before a jury.

If the Resident may venture to make a suggestion for other Provinces regarding a matter which, as he has said, does not concern the Hyderabad Assigned Districts, he would say "let Local Governments all over British India be empowered to invest District Magistrates with powers under Section 34 of the Criminal Procedure Code for the limited purpose of dealing with habituals under Section 75 of the Indian Penal Code." There would then remain for commitment only the comparatively few cases of the class referred to by Mr. C. J. Lyall and Dr. Lethbridge. Mr. Plowden, it should be mentioned, is under a misapprehension, supposing that the cases submitted for confirmation under Sections 34 and 380 of the Criminal Procedure Code throw any work worth speaking of on a Sessions Judge.

8. Mr. Obbard's remarks on the 3rd paragraph of Section 439 of the Criminal Procedure Code seem to the Resident deserving of consideration. Sir Dennis Fitzpatrick has often doubted whether there was any sufficient reason for limiting the powers of a High Court in the way that paragraph does. It not unfrequently stands in the way when an inferior Magistrate has taken up and disposed of a case himself, through an inability to appreciate the serious nature of the charge, or even in some instances with a deliberate design to shield the accused from receiving an adequate sentence; and lately it prevented the Resident enhancing a sentence on a juvenile habitual to the extent that was requisite to get him admitted to a reformatory.

From R. OBBARD, Esq., Officiating Judicial Commissioner, Hyderabad Assigned Districts, to the Secretary for Berar to the Resident at Hyderabad,—No. 3548, dated the 3rd November 1890.

I have the honour to reply to your No. 3332 of the 10th October 1890.

2. Opinion is apparently asked as to two points :—

(1) In regard to a Bill upon the subject of surveillance of habitual offenders submitted by the Punjab Government.

(2) In regard to the proposal of the Madras High Court that the cases of habitual offenders should, after conviction, be referred to the Sessions Court for sentence.

3. In regard to point (1) I can give no opinion, as the draft has not been attached to the papers forwarded with your number under reply. If opinion upon it is still required, I would ask the favour of your now forwarding a copy.

4. In regard to point (2), I think the matter is one which does not directly affect Berar. All our District Magistrates are invested with powers under Section 30, Code of Criminal Procedure, and the Sessions Court does not therefore ordinarily try habitual offenders. I do not think it would be advisable to permit the Court of Sessions to pass sentences for a longer term of seven years on the report of the District or any other Magistrate.

5. Habitual offenders when caught are adequately punished. No increase of the powers in regard to punishment is required in Berar. The only amendment of the criminal law in this

respect which I can suggest is the omission of the 3rd paragraph of Section 439, Code of Criminal Procedure. Subordinate Magistrates do sometimes try habitual offenders whom they ought not to try, and in such cases the High Court ought to have power to enhance the punishment without ordering the re-trial of the accused if the facts of the case show that the accused will not be prejudiced by such order. I suppose the Legislature thought that no sentence of more than two years should be passed without a trial before a District Magistrate or Sessions Court. I do not think that such a limitation of the power of the High Court is necessary in Berar, and if it is proposed now to let the Sessions Court pass longer sentences on reference, a corresponding increase of the High Court's powers might also be allowed. It might also be declared that nothing in the 3rd paragraph of Section 439 is intended to limit the High Court's power of practically enhancing punishments by ordering a re-trial. In Berar the Judicial Commissioner has held that a re-trial can be ordered under Section 439, Code of Criminal Procedure, with a view to enhancement of sentence alone, but I am doubtful whether that interpretation would be accepted in other Provinces where the letter and not the spirit of the Code of Criminal Procedure has to be followed. If the High Court have neither the power to enhance to a term exceeding two years, nor to order a committal with a view to enhancement, there is an opening for the escape of habitual offenders through the ignorance or carelessness of Subordinate Magistrates.

From T. CHICHELE PLOWDEN, Esq., Commissioner, Hyderabad Assigned Districts, to the Secretary for Berar to the Resident, Hyderabad,—No. 112 G., dated the 29th January 1891.

I have the honour to enclose copy of the letters cited in the margin from the officers whom, in accordance with your No. 2128-M. of the 7th July, I have consulted on the subject of Government of India No. $\frac{1}{426}$ of the 31st May last, with its enclosures. The Judicial Commissioner has forwarded me copy of his No. 3548, dated the 3rd November, to your address, and has informed me that he has no further suggestion to offer.

> From Deputy Commissioner, Ellichpur, No. 554, dated 10th October 1890.
> From Deputy Commissioner, Akola, No. 4762, dated 1st November 1890.
> From Deputy Commissioner, Buldana, No. 3200, dated 10th November 1890.
> From Deputy Commissioner, Wun, No. 2653, dated 18th November 1890.
> From Deputy Commissioner, Amraoti, No. 649, dated 24th November 1890.
> From Deputy Commissioner, Basim, No. 3013, dated 25th November 1890.
> From Inspector General of Police, Hyderabad Assigned Districts, No. 3230, dated 23rd December 1890.

2. There is a general consensus of opinion among officers in Berar that the hands of the police require to be strengthened to enable them to deal effectually with habitual criminals, and I have no suggestion to offer in respect to the provisions of the draft Bill submitted by the Punjab Government to this end. If the Bill becomes law, I hope that these provisions will be applied to the Hyderabad Assigned Districts; but, as observed by the Punjab Government, the practical working of the system of surveillance, which the provisions in question enable to be imposed, will depend upon the nature of the rules to be framed under Section 7. I do not think that sufficient cause could be shown to justify the application of Section 12 of the draft Bill to the Hyderabad Assigned Districts. And, as pointed out by the Inspector General of Police, Colonel Lane, the offence of cattle-poisoning is committed not by the inhabitants of any particular part of the country, but by persons belonging to the Dher class, and the provision for compensation should be directed against them. But I am not prepared to say that there is a necessity for any such enactment as Section 12 so far as the Hyderabad Assigned Districts are concerned.

3. With regard to the extent to which the provision of Section 75, Indian Penal Code, is made use of in passing sentences of transportation for life, I think that the Judicial Commissioner might be asked to undertake the examination of the record of convictions proposed at the end of paragraph 5 of the letter from the Government of India, and that subsequently circular orders should be issued giving such instructions to judicial officers as may appear to be necessary.

The suggestion made by the Madras High Court in respect to Section 349, Code of Criminal Procedure, appears to me an excellent one. But I should also like to see the application of the last clause of Section 348 of the Code of Criminal Procedure withdrawn from the Hyderabad Assigned Districts, so that habitual offenders may in future be committed for trial, under this section only, to the Court of Session or High Court, as the case may be. A District Magistrate who has been invested with powers under Section 30, Code of Criminal Procedure, cannot pass a sentence of transportation for a term exceeding seven years, and a sentence for a term exceeding four years requires confirmation by the Sessions Judge. The result is that two proceedings are nearly always necessary in these cases—one before the District Magistrate and the other before the Court of Sessions—because it cannot often happen that a sentence for a term not exceeding four years is adequate in the cases referred to in Section 348; and

the particular object which the Government of India has in view, namely, that sentences of transportation for life should be passed in such cases, cannot be attained because of the limited powers which attach to a District Magistrate invested under Section 30.

From COLONEL H. DEP. RENNICK, Deputy Commissioner, Ellichpur District, to the Commissioner, Hyderabad Assigned Districts,—No. 554, dated the 10th October 18.0.

With reference to your No. 6247, dated 30th September 1890, I have the honour to state that I have no remarks to offer.

From H. S. NICHOLETTS, Esq., Deputy Commissioner, Akola District, to the Commissioner, Hyderabad Assigned Districts,—No. 4762, dated the 1st November 1890.

In acknowledging receipt of correspondence circulated for opinion under your office endorsement No. 6247, dated 30th September 1890, I have the honour to state that the correspondence has been forwarded to the Deputy Commissioner, Buldana, and in compliance with your request and that of the Secretary to Government of India, I have the honour to offer my opinion on the points put forward in the Secretary's letter, and to say that, for the purpose of controlling bad characters and habitual criminals in Berar, I consider police surveillance is absolutely necessary, and, with a view to enable the police to exercise the power of supervision, I would suggest that whenever the police obtains a conviction of a person, they should at once lay before the District Magistrate the grounds for asking the insertion of the name of the accused in the police information register.

The District Magistrate should judge if a man is of the class or kind who should be under surveillance for a certain number of years, the maximum period not to exceed seven years.

Provisions regarding cattle-poisoning and arson should be general and not confined to a particular province. I am of opinion that any law made on these two class of cases would be a dangerous instrument in the hands of people who have to apply it.

Cattle-poisoning in this part of the country is generally in the hands of the mahars. My own idea is, that if we were to improve the status of the watandarmahar, he would very soon put a stop to any one of his class committing the offence. At present he goes in for cattle-poisoning himself, as he finds his rights of every sort are disputed by deshmukhs, deshpandias, patels, patwaris and cultivators. This short-sighted policy (of retaining skins and refusing huks) is at times the ruin of cattle owners.

Cases of arson in Berar are few and far between. I am of opinion that the recommendation made by the Madras High Court is an excellent one and should be adopted. I would myself go further, and would suggest that 2nd and 3rd class Magistrates should send up, under Section 349, Criminal Procedure Code, to District Magistrates having powers under Section 30, Criminal Procedure Code, who should judge whether he should himself punish the habitual offender, or forward the proceedings to the Court of Sessions for enhanced punishment, such as transportation. The District Magistrate could punish up to seven years, which would be sufficient in most cases; transportation would be resorted to in the case of a habitual of a crime class, or where there are no hopes of redemption.

From the Deputy Commissioner, Buldana District, to the Commissioner, Hyderabad Assigned Districts,—No. 3200, dated the 10th November 1890.

With reference to enclosure received under cover of your office No. 6247, dated 30th September 1890, on the subject of the treatment of habitual offenders, I have the honour to state that from my experience imprisonment in jail with a certain class of offenders has no deterrent effect. From the fact that in some cases prisoners have requested to be sent to some particular jail, I conclude that in that particular jail life is pleasant to them. I am in favour of substituting transportation for imprisonment in the case of such men, but the law, as contained in Section 75, Indian Penal Code, as regards transportation, is in fact a dead-letter in Berar. I have known of no case in which it has been applied, because the only person who can apply it is the Sessions Judge, and there are no instructions to commit such cases to the Sessions Court; on the contrary, the instructions are to send such cases to the District Magistrate.

Sessions cases are troublesome things, particularly now that they are not held in the district where they occur. If two convictions under Chapter XII or XVII are considered sufficient to bring an offender under the operation of Section 75, as is proposed, then there would not be much scope left to the Magistrate to exercise his discretion, and it might be left to him to impose the punishment provided in that section. The tendency of law is in the first place to provide for the due administration of justice, and then to prescribe endless obstacles to that law

being carried out. When criminals are in gang it is exceedingly difficult to get people to come forward to give information as to bad livelihood unless the whole gang is brought up, and there is a certainty of security being demanded: but as the most important cases have to go to the Sessions Judge, who knows nothing of local circumstances, there is always a chance of the Magistrate's proceedings being interfered with and the witnesses exposed to the vengeance of some of the gang. I don't think the proposed system of surveillance would be suitable to the circumstances of Berar. It might be done as regards tribes or classes, but I doubt our police being able to cope with individuals. Criminals are not in the habit of leaving their homes to commit crimes at any great distance and returning with the plunder.

There is no occasion for introducing the procedure of levying compensation from the inhabitants of a locality for losses caused by special acts of mischief, as there is no such system of conspiracy to commit or connive at outrages for the coercion or punishment of classes of the community obnoxious to those who commit them.

From the Deputy Commissioner, Wun District, to the Commissioner, Hyderabad Assigned Districts,—No. 2653-876, dated the 18th November 1890.

In reply to your memorandum No. 6247, dated the 30th September last, circulating a draft Bill for the surveillance of habitual offenders and connected correspondence, I have the honour to state that in my opinion it is very desirable, for the reasons therein set forth, that legislation should take place on the lines of the Punjab Bill. It is certain that the hands of the police require to be strengthened in dealing with habitual criminals, and I do not think that there is any necessity for hesitation to interfere with the liberty of offenders who have twice been convicted of offences against property, while the fact that such are subjected to a system of surveillance would prove, I think, the strongest of deterrents against crime.

2. I think all the sections of the Punjab draft should be adopted down to the end of No 11. Section 12 would not be useful in this Province: the only offences that ever become at all frequent are cases of cattle-poisoning by mahars for the sake of the skins, and in such cases the section would provide no remedy, as the sufferers, the owners of the cattle, would be made by it to compensate each other; the guilty section of the community, being the poorest, practically escaping scot-free; and if this section were made applicable to Berar, I would suggest the omission of the words "of their respective means" from the closing portion of clause (2) of that section. But in my opinion it is not required for this Province.

3. With reference to paragraph 6 of the letter of the Secretary to the Government of India, I am strongly of opinion that it would be a most useful amendment of the law if Subordinate Magistrates were empowered to refer cases in which habitual offenders were convicted by them to the Sessions Court for sentence under section 348 of the Criminal Procedure Code: every habitual offender has to be tried by the District Magistrate, a system that usually results in a reference to the Sessions Court for confirmation of sentence, and the burden is likely to become more than the District Magistrate can bear, while, though I think that imprisonment in a part of India foreign to the convict would have a much stronger deterrent effect than transportation to the Andamans, the reformatory effect of a sentence of transportation is very important.

From the Officiating Deputy Commissioner, Amraoti District, to the Commissioner, Hyderabad Assigned Districts,—No. 649, dated the 24th November 1890.

With reference to correspondence circulated for opinion under your office endorsement No. 6247, dated 30th September 1890, and which correspondence has been duly forwarded on to the next Deputy Commissioner on the list, I have the honour to offer my opinion on the points put forward in the said correspondence, and beg to state that for the purpose of controlling bad characters and habitual criminals in the Hyderabad Assigned Districts, I am distinctly of opinion that police surveillance is absolutely necessary, and to enable the police to exercise the power of supervision, I would suggest that on the police obtaining a conviction against any person they consider should have his name in the police information register, they should at once place before the District Magistrate his name and grounds for insertion, leaving it for the District Magistrate to decide whether he is a proper person to be under surveillance or not.

Cattle-poisoning is practised in Berar to an alarming extent and rare of detection, and I would suggest severe measures being adopted to put it down.

I am of opinion that the recommendation made by the Madras High Court is an excellent one and should be adopted.

On the whole, I am of opinion that the proposed provisions of the Bill circulated will prove highly efficacious and should be adopted.

From the Officiating Deputy Commissioner, Basim District, to the Commissioner, Hyderabad Assigned Districts, —No. 3013, dated the 25th November 1890.

In reply to your endorsement No. 6247 of the 30th September last, which reached me to-day, I have the honour to report as follows on the questions raised in Government letter No. 1—426 of the 31st May last.

2. As regards the copy of a Bill upon the subject of surveillance of bad characters, I am of opinion that the measure is one much required to keep a check on local habitual offenders, and that the proposed provisions may be adopted in their entirety. But the question of levying compensation from all the inhabitants of a village in the neighbourhood of which certain offences have been committed is one that cannot be so easily answered. In my humble opinion it is unfair in principle to make honest men pay for the acts of the dishonest, unless indeed it is strongly suspected that a whole class connived at the offences, or harboured the offenders and shared in the booty. If such suspicions were very strong, and no evidence forthcoming of complicity, the proposed measure would be a justifiable one. But my experience of many years in Berar induces me to suggest that the necessity for a provision of the above kind does not exist in this Province, and I would not recommend its adoption.

3. I am of opinion that the suggestions of the Madras High Court, an extract from which accompanies the Government letter, is one that may be safely adopted. I would extend the principle to all cases in which a previous conviction of offences specified in Section 75 of the Indian Penal Code has been obtained. This proposed amendment of the law would, I think, operate more successfully in suppressing habitual crime than any yet proposed.

From COLONEL C. T. LANE, Inspector General of Police, Hyderabad Assigned Districts, to the Commissioner, Hyderabad Assigned Districts,—No. 3230, dated the $\frac{16th}{23rd}$ December 1890.

I have the honour to return the enclosures of your No. 7716, dated 8th December, with the following remarks, which I will divide under two heads:—

2. (I) *Surveillance over habitual offenders.*—In connection with this subject I beg to attach copy of a letter I addressed to the Inspector General of Police, Punjab, in 1886. The views I then held have been strengthened since.

3. I have carefully read the draft Act proposed by the Punjab Government, and I am of opinion that it is an excellent measure, which, if made law, will strengthen the hands of the district authorities in dealing with habitual offenders.

4. Very little serious crime is committed by the ordinary resident population of Berar. It is nearly all committed by either wandering criminal tribes or by criminals from the North-Western Provinces and Rajputana who regularly frequent Berar for criminal purposes. The number of these persons is so great that it is impossible to demand security from them, for those who failed to give it would fill the jails. They wander over the country almost unchecked until they get the opportunity they have come for. As regards Berar, then, I look on Section 4 as perhaps the most important in the Act. It will enable the Magistrate of the district to place such men under surveillance instead of sending them to jail. This will prevent their going from place to place, changing their locality as soon as the police begin to suspect them.

5. (II) *Prevention of special acts of cattle-poisoning.*—The crime is not unfrequent in Berar. In my capacity as Inspector General of Registration, I saw an agreement entered into by the mahars of a village with the patel that they would not poison the cattle of *his* village. The agreement was duly registered by the parties. I do not, however, think that in Berar the inhabitants keep back information regarding this crime. It is restricted to the *Dher* class who get the skins, and the agricultural population are the victims. If such a provision as that the Dhers of a certain circle should make good loss of poisoned cattle instead of the general inhabitants, it would have a good effect.

6. As regards the suggestions in paragraph 6 of Government of India letter, I entirely agree with the proposal. I can point to cases where the Court of Session having considered a sentence imposed on an offender by the District Magistrate insufficient has ordered his committal to the sessions, and the sessions trial has ended in acquittal. The people called on to go from distant parts of the district to head-quarters are at best put to considerable inconvenience and loss, while, if the journey is repeated often in the same case, they come to the conclusion that it is a mistake to know anything about the case.

From COLONEL C. T. LANE, Inspector General of Police, Hyderabad Assigned Districts, to the Inspector General of Police, Punjab,—No. 729, dated the 2nd April 1886.

I have the honour to acknowledge the receipt of your No. 732, dated 17th March.

2. I scarcely think that, as regards the desirability in the abstract of a measure which would allow of a legalized surveillance over habitual criminals after expiry of their sentences, there can

be much difference of opinion among officers acquainted with recent developments of crime in India, and I think that a vague fear that such a measure placed in the hands of the police might be abused has been the principal obstacle to its enforcement.

3. The fear might be well founded if the surveillance were to consist of a power of constant interference with the criminal by subordinate police officers, but the measure which would, I believe, be approved by experienced police officers and Magistrates would be one which would lay on the offender himself, so to speak, the burden of maintaining his own surveillance by the authorities by making it obligatory on him under penalty of a return to jail to report his movements to those authorities. The police would have no power of direct interference, but would have to prove breach of conditions of release to the satisfaction of a Magistrate before the penalty could be enforced.

4. I have for some time held the opinion strongly that this is one of the three things most required to assist the police in repressing crime, the others being an Act making it obligatory on sonars, etc., to keep a register of all ornaments purchased or melted down by them, and restriction on the sale of poisons, especially arsenic.

5. I think it well to point out that the want of any *legalized* method of surveillance over habitual criminals drive the police to unauthorized methods which when challenged cannot be upheld.

6. I cannot perhaps better support the case for the advisability of passing a measure which would provide for the exercise of a legalized surveillance over habitual bad character than by a reference to a case referred to in my report for 1884, *viz.*, that of three habitual datura-poisoners; enquiry has shown that the men I referred to have been in the habit for years of disappearing from their villages at intervals and returning to them with money evidently gained by committing robbery by poison. As matters stand at present, when these men are released they can without any difficulty resume their calling, no one has a right to challenge them, nor need they tell any one where they intend to go or on their return where they have been. If these men had to report their movements they could not exercise their criminal calling. With the facilities which now exist for travelling it is simply impossible for the police to keep a watch over the movements of criminals of this kind.

7. If a measure similar to that in force in England could be obtained for India, under which habituals, in addition to a sentence of imprisonment, could be sentenced to a further term of surveillance, I believe that an important step would have been gained towards the more effectual repression of professional crime.

To the RIGHT HONOURABLE the EARL OF KIMBERLEY, K.G., Her Majesty's Secretary of State for India, from the Government of India, Home Department,—No. 2, dated the 11th January 1893.

We have the honour to forward, for Your Lordship's consideration, copies of the papers entered in the enclosed list, on the subject of a Bill which it is proposed to introduce in the Council of the Governor General for making Laws and Regulations, at its next meeting, to provide for the more effectual surveillance and control of habitual offenders and for certain connected purposes.

2. With our Judicial Despatch No. 24, dated the 8th July 1890, we sent home, for the information of the Secretary of State, copies of correspondence between ourselves and the Local Governments relative to an enquiry which had been made under our instructions into the state of crime in the Madras and Bombay Presidencies, the Lower Provinces of Bengal the North-Western Provinces and Oudh, the Punjab and the Central Provinces. The result of that enquiry, so far as the subject-matter of the present Bill is concerned, was to show very clearly that the improvement in communications which has been effected in recent years, chiefly by railways and the telegraph, had greatly facilitated the depredations of professional criminals, and had increased the difficulty experienced by the Police in the detection and prevention of certain classes of crime. This difficulty arises mainly from the absence of any provision in the law authorizing the Police in this country to keep habitual criminals under surveillance, and to control and watch over the movements of bad characters. For, although some sort of police supervision over convicted and suspected persons is carried out in most parts of the country, this is entirely an executive arrangement and rests on no legal basis. In 1873 a proposal was made that the Government of India should legislate on the model of Section 8 of 34 and 35 Vict., Chapter 112, for the prevention of crime by placing bad characters under surveillance. The proposal was not then adopted because it was founded on a new provision of English law which had not been subjected to the test of experience, and also because the Police of the country were not at that time considered fit to exercise such powers of supervision. But the reports which were received by Lord Ripon's Government in 1881 in connection with the amendment of the Criminal Procedure Code, and the more recent reports

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submitted to us in connection with the enquiry referred to above, into the state of crime in the larger Provinces in India, and in reply to our reference to Local Governments on the subject of the present Bill, have led us to the conclusion that legal powers of surveillance over bad characters are now absolutely indispensable if the Police are to retain any adequate check over habitual criminals. On the other hand, the chief objections to the enactment of such a measure in India have been removed by the experience of the working of the English Statute, and by the fact that extensive schemes of reorganisation have already been carried out in many Provinces, while others are still under contemplation, for improving the condition of, and raising the standard of intelligence and honesty among, the Police. Moreover, as some form of surveillance is already exercised by the Police in most parts of India, it is desirable that this surveillance should be placed on a legal footing, at any rate in respect of persons judicially declared to be bad characters.

3. The Bill for the surveillance and control of habitual offenders now submitted to Your Lordship (Enclosure No. 15 to this Despatch) has its origin in a draft forwarded by the Punjab Government with its letter No. 577S., dated the 30th September 1889 (Enclosure No. 1), which was addressed to us in continuation of the Local Government's report on the state of crime in that Province. We forwarded the draft Bill for a report and expression of opinion to Local Governments and Administrations and to the Calcutta High Court with our letters of the 31st May 1890 (Enclosures Nos. 2 and 3), and after a consideration of the replies received, we have modified the draft and put it into the form in which it is now enclosed with this Despatch. Your Lordship will observe that, though there are considerable differences of opinion as to matters of detail, there is a general agreement among the authorities consulted as to the principle of the measure and the necessity of more effective regulations for the control of habitual offenders.

4. The provisions of the Bill fall roughly under four heads:—

(*1*) the improvement of the law relating to security for good behaviour;

(*2*) the surveillance of convicted persons judicially declared to be habitual offenders;

(*3*) the modification of the procedure for the trial of habitual offenders;

(*4*) the repression of certain offences against property by the assessment of compensation in the localities where they occur.

We will now explain the principal changes in the law proposed under each of these heads, and the reasons which have led us to propose these changes.

5. Sections 2 to 4 of the Bill contain provisions for the improvement of the law relating to security. The only existing provision for the prevention of crime by habitual offenders is to be found in Chapter VIII of the Criminal Procedure Code (Section 110), which authorizes the taking of security for good behaviour from any person who is "an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to be stolen, or who habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury." By Sections 505 and 506 of the former Criminal Procedure Code of 1872 Magistrates were empowered to require security from persons who were "of notoriously bad livelihood" or "desperate or dangerous characters." These words were omitted from the Code of 1882 in consequence of objections that their meaning was vague, and that the powers which they placed in the hands of the Police were liable to abuse. It is represented in many of the papers received in reply to our letters of the 31st May 1890 that this omission has deprived the preventive sections of the Code of much of their value; and the Governments of Bombay and the North-Western Provinces and Oudh, as well as the Chief Commissioner of Burma, recommended that these or similar words should now be restored to the Code. As Sir Auckland Colvin points out, security could not under the existing law be demanded from persons habitually committing such offences as kidnapping or professional poisoning. We think there is much force in the arguments used by these authorities, and we accordingly propose, in re-enacting Section 110 of the Criminal Procedure Code, to specify more clearly the classes of persons from whom security may be required. The material changes are, first, the restoration of the substance of the words quoted above as having been omitted in 1882, but in such a form as to render the clause free from the charge of vagueness—clause (*f*), section 2 of the Bill; and, secondly, the addition in clause (*d*) of mischief to the list of offences the commission of which makes the offender liable to be called upon to furnish security. The latter addition has been made to meet the case of such offences as habitual cattle-poisoning, which we have reason to believe is practised on a large scale in some parts of the country. Clause (*c*) is founded on a note which will be found on page 99 of Mr. Whitley Stokes's Anglo-Indian Codes, Adjective Law.

6. Section 3 of the Bill empowers the Magistrate to order a person found to be a bad character to be kept under police surveillance for any term up to three years in lieu of being required to give security for good behaviour. Section 4 permits a person who has been ordered to give security but has been unable to furnish it to be kept under police surveillance in lieu of being detained in prison. Under Section 8 of the Bill such orders for police surveillance are subject to the same rights of appeal as are given by the Criminal Procedure Code in respect of orders to give security.

7. Sections 5 to 15 of the Bill contain provisions for the surveillance of persons who fall within the definition of "habitual offender" stated in Section 5. The definition is framed on the principle embodied in Section 8 of 34 and 35 Vict., Cap. 112. Two convictions under Chapter XII or XVII of the Indian Penal Code are essential; and it is further necessary before a person can be declared an "habitual offender" that the Court or Magistrate should be satisfied on the evidence that the accused habitually commits crime or depends on crime as a means of livelihood. The maximum period for which any person may be ordered to be kept under police surveillance in such cases is, as in the English Act, seven years from the date of the expiration of the substantive sentence; and such orders have been made subject to the same rights of appeal and revision as if they formed part of the substantive sentence to which they are attached. Presidency Magistrates and District and Sub-divisional Magistrates have been empowered, on the application of the person concerned, to accept security for good behaviour in lieu of police surveillance, and they are further authorized to cancel orders for surveillance in particular cases when this can safely be done. The details of the rules as to the supervision of persons ordered to be kept under surveillance must necessarily differ according to the local circumstances and requirements of each Province, and we have therefore decided not to include any general rules in the Bill, but to delegate to each Local Government the power to frame such rules for its own territories with our previous sanction. The obligation of village headmen, landholders and others, to report the movements of bad characters has been extended so as to include reports as to the movements of persons ordered to be kept under surveillance.

8. The Bombay and Bengal Governments would go beyond these proposals and legalize surveillance over unconvicted persons who are only suspected to be bad characters. The Governor of Bombay in Council, while abstaining from pressing the point in deference to our objections, feels it his duty to bring to notice that the most experienced District Officers agree in thinking that an effective control of habitual offenders cannot be obtained without legalizing the roll-call system for the surveillance of unconvicted bad characters, who will not be reached by the Bill, but who form the classes from which the habitual offenders in the jails are recruited (Enclosure No. 5). The Lieutenant-Governor of Bengal (Enclosure No. 6) is of opinion that rules should be authorized by the Bill for two classes of bad characters,—convicted "habitual offenders" and unconvicted "suspected persons;" the latter class would be subject to less stringent regulations than "habitual offenders," but rules would be framed for their registration and for domiciliary visits, searching of houses and information as to their movements. After fully considering these remarks we retain our objections (stated in our letters of the 31st May 1890) to the maintenance of *public* registers of mere suspects, and to the establishment of a system of legalized supervision over unconvicted persons. We are unwilling to go beyond the principle of the English Act already mentioned, which only permits supervision in the case of convicted criminals. The Police in India, as in all other countries, must of course maintain secret registers of suspects and keep a watch over the movements of persons supposed to be bad characters, but, as at present advised, we are not prepared to confer on them any powers to interfere with or harass such persons.

9. The only modification which has been made in the procedure for the trial of habitual offenders is the amendment of Section 348 of the Criminal Procedure Code contained in Section 16 of the Bill. Section 348 provides that, when a person who has been convicted of an offence punishable under Chapter XII or XVII of the Penal Code (offences against coinage, stamp law and property) with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for three years or upwards, he shall ordinarily, if the Magistrate before whom he is accused considers him to be an habitual offender, be committed to the Court of Session or the High Court, as the case may be. The High Court at Madras, in a letter dated 27th July 1885 (extract enclosed with our letter of 31st May 1890, Enclosure No. 2), written when the Criminal Procedure Code was last under revision, made a suggestion that the law should be so amended as to render it competent to a Magistrate to take cognizance of cases falling under Section 348, and to enter a conviction and refer the case to the Sessions Court for sentence, the Sessions Court being at

liberty to make or direct such further enquiry as it thinks fit, and being bound to hear the offender. The following grounds were advanced in support of this suggestion :—

With regard to the amendment in procedure which the High Court desires to see adopted, I am to say that under Section 341, Criminal Procedure Code, a Magistrate of the second or third class can now convict of an offence cognizable by himself, even though the offender seems to deserve a more severe punishment than he is empowered to inflict, and may refer the case to the District or Divisional Magistrate to whom he is subordinate to pass sentence. All the reasons which induced the Legislature to make this provision apply, the High Court considers, with even greater force to those cases which become cognizable by the Court of Sessions, merely because the offender has been previously convicted and seems to be an habitual criminal. The Sessions Divisions, I am to point out, are in this Presidency very large, and it entails a great hardship on the witnesses in cases of petty theft and the like that they should have to attend the Sessions simply because the accused is an old offender. The Court believes that this liability often leads to a failure of justice and the illegal compounding of offences.

We notice that precisely similar reasons are advanced by the Chief Commissioner of Burma (Enclosure No. 10), who further expresses an opinion that Magistrates themselves are disinclined to put the Sessions Court to the trouble of trying cases of a petty character merely because a long sentence is demanded owing to the antecedents of the accused. The result, we fear, is that Magistrates too often dispose of such cases themselves, though they are unable to pass a sufficiently deterrent sentence. In our opinion the arguments stated above have much weight, and we have, after considering the replies of Local Governments, embodied the proposal of the Madras High Court in Section 16 of the Bill. Cases of this kind are, as a rule, not complicated; the evidence is generally of a simple character, and a committal to the Sessions is necessary merely because it is beyond the power of a Magistrate to pass an adequate sentence, except perhaps in districts in which the District Magistrate has powers under Sections 30 and 34 of the Code. The existing procedure causes inconvenience and delay, and exposes the parties and witnesses to the trouble of attendance in Court on two occasions. Under the revised section they will ordinarily be relieved from the second attendance; but, as at present provided in cases falling under Section 349 of the Code, the Sessions Judge will be able to correct any omission on the part of the trying Magistrate by making such further enquiry and taking such further evidence as he thinks desirable.

10. The Madras High Court, however, added a proviso to their proposal to the effect that, in order to save the right of trial by jury, where it exists, the Magistrate, before referring a case to the Court of Sessions for sentence, should always offer the accused the option of a committal for trial before the Sessions Court. We have not been able to accept this proviso, which would, in our opinion and in that of most of the Local Governments consulted, go far to render the proposal itself practically inoperative. We are moreover of opinion that there would not be any substantial advantage, even from the point of view of the accused, in his being tried before a jury in such cases as our recent enquiry into the working of the jury system in India showed that native juries were unduly prone to convict habitual criminals. We are aware that the practice prevailing under the Summary Jurisdiction Act, 1879, of allowing the accused an option as to the Court by which he shall be tried has worked with success in England; but the cases under consideration are *ex hypothesi* those in which a severe sentence is demanded, and are therefore, in our opinion, not suitable for the concession of such an option. The Magistrate would have to be satisfied, before offering the option, that there was at least a *primâ facie* case, and the accused would therefore be aware that, unless he had a strong defence, he was almost certain to be convicted by the Lower Court. And not only so,—he would also know that his punishment would not be such as the Magistrate himself is empowered to pass, but would be awarded by the very same Judge who would have to try him if he elected to be committed. He would therefore, as has been pointed out in many of the local reports and notably by Sir Dennis Fitzpatrick (Enclosure No. 13), almost invariably elect to be committed to the Sessions in the hope of escaping punishment by one of the many accidents which may occur on a new trial.

11. By Section 17 of the Bill, Section 349 of the Criminal Procedure Code has been slightly modified, so as to permit District Magistrates who have been invested with powers under Sections 30 and 34 of the Code to sentence up to the limit of their powers on a reference by Subordinate Magistrates.

12. Section 19 of the Bill contains provisions for the repression of offences against property in cases in which they can be traced to a particular locality, but the offenders cannot be identified owing to a combination of the inhabitants to withhold information which would lead to their detection. In such cases the Magistrate has been empowered, after due enquiry and subject to the confirmation of the Commissioner, or (where there is no Commissioner) of the

Local Government, to assess compensation on the residents of the locality generally, excluding any persons or classes of persons whom he finds to be clearly innocent of complicity with the offence. The Punjab Government, in its letter of 30th September 1889 (Enclosure No. 1), pressed on us the desirability of legislating on these lines to meet cases of cattle-poisoning and incendiarism in which the offenders could not be traced. After pointing out that the number of cases of serious mischief annually reported in the Punjab had risen considerably in late years, it was added :—"This matter engaged the attention of the Commissioner of the Rawalpindi Division so long ago as 1883, in which year he advocated the expediency of enacting that in the case of persistent want of detection of the crimes of cattle-poisoning and rick-burning, the village or patwari circle where such undetected crimes had been committed should be ordered to pay the value of the property destroyed. * * * Offences of this nature are very rife in certain parts of the Punjab, while the detection of them is most difficult, not only because it is not easy to produce satisfactory evidence in Court of a crime which can be committed by one person on a dark night, but also because, although the perpetrator is often known to the villagers, no one dares to come forward and give evidence lest a similar fate befall his own property." The reports received from Local Governments, in reply to our letter of the 31st May 1890, show that the need for such legislation is nowhere so strong as in the Punjab, but that it would be expedient to take power to assess compensation in this manner, not only in cases of mischief, but also in cases of dacoity and cattle-lifting, which are frequently, especially in border districts, of the nature of clan offences. We have accordingly included these offences in the revised section. As these provisions will only require to be put in force under exceptional circumstances and in particular tracts where the crimes mentioned prevail to a serious extent, we have provided that Section 19 of the Bill shall only apply to tracts to which it is specially extended by the Local Government with the previous sanction of the Governor General in Council.

As precedents for such legislation in India we may refer Your Lordship to Section 37 of Bombay Regulation XII of 1827, and to the provisions of the Police Acts [*vide* Section 25 (2) of Bombay Act IV of 1890, and section 16 of Act V of 1861] which sanction the quartering of additional police at the charge of the inhabitants in disturbed or dangerous localities. We believe also that the working of the statutes providing for the levy of compensation in similar cases in Ireland has been attended with good results.

13. We shall be glad to receive Your Lordship's approval of the enclosed Bill by an early date. As the time at the disposal of our Council for legislative business during the current session at Calcutta is this year less than usual, it would be an advantage if Your Lordship could find it possible to communicate your decision by telegraph.

A Bill to provide for the more effectual surveillance and control of habitual offenders, and for other purposes.

Whereas it is expedient to provide for the more effectual surveillance and control of habitual offenders, and for certain other matters hereinafter appearing;

It is hereby enacted as follows :—

Title, extent and commencement.

1. (*1*) This Act may be called the Habitual Offenders Act, 1893;

(2) It extends to the whole of British India; and

(3) It shall come into force on the

Security for good behaviour of habitual offenders.

2. In Section 110 of the Code of Criminal Procedure, 1882, for the words "receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury," the following shall be substituted namely :—"receives information that any person within the local limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker or thief, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(*d*) habitually commits mischief or extortion, or

(*e*) in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury, or

(*f*) is of a character so desperate and dangerous as to render his being at large without security hazardous to the community."

Power to order police surveillance instead of taking security for good behaviour.

3. When any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or any Magistrate of the first class specially empowered in this behalf by the Local Government has required any person referred to in Section 110 of the Code of Criminal Procedure, 1882, as amended by this Act, to show cause why he should not be ordered to execute a bond for his good behaviour, he may, if he shall think fit, instead of making an order under Section 118 of that Code, requiring such person to execute a bond as aforesaid, order that he be placed under police surveillance for any term not exceeding three years.

Power to order police surveillance in default of security for good behaviour.

4. Should any person ordered under Section 118 of the Code of Criminal Procedure, 1882, to give security for good behaviour fail to give such security at or before the commencement of the period for which such security has been ordered to be given, the Magistrate who made the order requiring security may, instead of directing that the person be committed to, or detained in, prison under Section 123 of the same Code, order that he be placed under police surveillance for any term not exceeding three years.

Power to declare convicted persons to be "habitual offenders" for the purposes of Sections 6 and 7.

5. When any person is convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, and

(*a*) he is proved to have been previously convicted of any such offence, and

(*b*) the Court or Magistrate is satisfied, upon the evidence produced before him or it, that he habitually commits crime, or depends on crime as a means of livelihood,

the Court or Magistrate may make an order declaring him, for the purposes of Sections 6 and 7 of this Act, to be an habitual offender.

Power of convicting Court to order habitual offender to be placed under police surveillance in addition to sentence of imprisonment or transportation.

6. (*1*) Any High Court, Court of Session, Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the Local Government in this behalf, may, if it or he shall think fit, when passing a sentence of imprisonment or transportation on an habitual offender, order that he be placed under police surveillance for any term not exceeding seven years from the date of the expiration of the sentence.

(*2*) Whenever a Magistrate of the first class who has not been specially empowered under sub-section (1), or a Magistrate of the second or third class has passed a sentence of imprisonment on an habitual offender, and is of opinion that he ought to be placed under police surveillance on the expiration of the sentence, he may record the opinion and submit his proceedings, and forward the offender, to the District Magistrate or the Sub-divisional Magistrate to whom he is subordinate.

(*3*) The Magistrate to whom the proceedings are submitted may, if he shall think fit, examine the parties and recall and examine any witness who has already given evidence in the case and call for and take any further evidence; and may, if he shall think fit, order that the offender be placed under police surveillance for any term not exceeding seven years from the date of the expiration of his sentence.

Power of Appellate Court to order police surveillance.

7. An Appellate Court acting under clause (*b*) of Section 423 of the Code of Criminal Procedure, 1882, may, if it shall think fit, order that an habitual offender who has been sentenced to imprisonment or transportation be placed under police surveillance for any term not exceeding seven years from the date of the expiration of the sentence.

Appeal and revision in the case of orders for police surveillance.

8. (*1*) Every order for police surveillance made under Section 3 of this Act shall be subject to the same rights of appeal to and powers of revision by superior Courts and Magistrates as if it had been an order for security to be given made under Section 118 of the Code of Criminal Procedure, 1882.

(*2*) Every order for police surveillance made under Section 6 or Section 7 of this Act shall be subject to the same rights of appeal to and powers of revision by superior Courts and Magistrates as if it had formed part of the sentence to which it is attached.

Conferment, continuance and cancellation of powers.

9. The provisions of Sections 39, 40 and 41 of the Code of Criminal Procedure, 1882, shall apply in the case of orders by the Local Government conferring powers on Magistrates under Section 3 or Section 6 of this Act.